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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,)
21)
22 Plaintiff,) C-89-4047 JPV
23)
24 v.) CONSENT DECREE
25)
26 TBG Inc., and Indian)
Head Industries, Inc.)
Defendants.)

FILED

MAY 14 1990

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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

TBG INC. and INDIAN HEAD)
INDUSTRIES, INC.)

Defendants.)

CIVIL ACTION NO.
89-4047 JPV

~~PROPOSED~~ ORDER
ENTERING CONSENT DECREE

ENTERED IN COURT RECORD 5/18/90

This matter is before the Court for entry of the proposed consent decree that was lodged with the Court on November 22, 1989. Having considered the proposed consent decree, the public comment thereon, the United States' motion for

1 entry, the defendants' statement of non-opposition to the motion
2 for entry, and the record and pleadings herein, the Court orders
3 that the proposed consent decree be entered with the following
4 modifications to Section XXII, FORM OF NOTICE. Page 66, lines 1-
5 7 of the Consent Decree shall be changed to reflect the U.S.
6 Environmental Protection Agency's current address and shall read
7 as follows:
8

9 "As to EPA:

10 EPA Project Coordinator--MGM Brakes Site
11 Superfund Enforcement Branch
12 U.S. Environmental Protection Agency
13 1235 Mission Street
14 San Francisco, CA 94103

15 AND

16 Office of Regional Counsel
17 U.S. Environmental Protection Agency
18 1235 Mission Street
19 San Francisco, CA 94103"

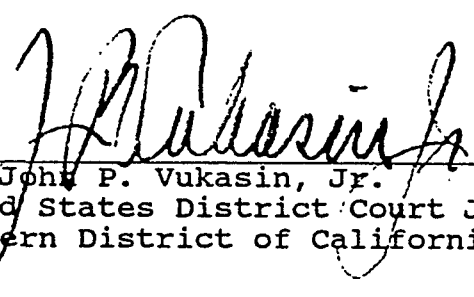
20 To allow the parties to change the addresses to which
21 notices are sent in the future without approval of the Court, a
22 single sentence shall be inserted on page 66 after line 18
23 immediately following "party to whom notice must be given
24 pursuant to this Consent Decree." The new sentence shall read:
25 "Notwithstanding the provisions of Section XXIII, MODIFICATION,
26 the EPA or the United States may change the addresses, to which
27 notices directed to EPA or the United States must be sent, by
28 sending notice of such change(s), via registered mail return
29 receipt requested, to the then current addresses provided for the
30 Settling Defendants; the Settling Defendants may change the
31 addresses to which notices directed to them must be sent, by

1
2 sending notice of such change(s), via registered mail return
3 receipt requested, to the then current addresses provided for the
4 United States and the EPA."

5
6 BE IT SO ORDERED:

7
8 Dated: May __, 1990

9 MAY 14 1990


Hon. John P. Vukasin, Jr.
United States District Court Judge
Northern District of California

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,)
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22 Plaintiff,) C-89-4047 JPV
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NORTHERN DISTRICT OF CALIFORNIA

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3 TABLE OF CONTENTS

	<u>Page</u>
I. Definitions.....	4
II. Jurisdiction	7
III. Purpose	8
IV. Findings	8
V. Parties Bound	9
VI. Site Background	10
VII. Work to Be Performed	15
VIII. EPA Performance of the RD/RA.....	22
IX. Health and Safety Plan	25
X. Quality Assurance/Quality Control Plans	25
XI. Project Coordinators	27
XII. Site Access	31
XIII. Submission and Availability of Documents	
Sampling and Analysis	34
XIV. Financial Assurance	37
XV. Retention of Records	38
XVI. Reimbursement of Future Response Costs.....	40
XVII. Reimbursement of Past Costs	43
XVIII. Reservation and Waiver of Rights	44
XIX. Stipulated Penalties	46
XX. Dispute Resolution	56
XXI. Force Majeure and Other Delays.....	62

1	XXII.	Form of Notice	65
2	XXIII.	Modification	67
3	XXIV.	Admissibility of Data	67
4	XXV.	Covenant Not to Sue	67
5	XXVI.	Community Relations	72
6	XXVII.	Public Participation	73
7	XXVIII.	Notice to the State	73
8	XXIX.	Completion of the Remedial Action	73
9	XXX.	Insurance	75
10	XXXI.	Indemnification of the United States	78
11	XXXII.	Other Claims	78
12	XXXIII.	Continuing Jurisdiction	79
13	XXXIV.	Representative Authority	79
14	XXXV.	Termination and Satisfaction	79
15	XXXVI.	Effective Date	80
16	XXXVII.	Section Headings	80
17		Record of Decisions, MGM Brakes	
18		Superfund Site	Appendix A
19		Scope of Work for Remedial	
20		Design and Remedial Action	Appendix B
21		Activities Necessary for Completion	
22		of Remedial Action	Appendix C
23			
24			
25			
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27			

1 This Consent Decree is made and entered into by and between the
2 United States of America ("United States" or "Plaintiff"), on behalf
3 of the United States Environmental Protection Agency ("EPA"), and
4 ("Settling Defendants").

5 WHEREAS, the United States, on behalf of the Administrator of the
6 EPA, has filed a complaint in this matter pursuant to the
7 Comprehensive Environmental Response, Compensation, and Liability Act,
8 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and
9 Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613
10 (1986), ("CERCLA"), seeking to compel the Settling Defendants to
11 perform remedial actions and to reimburse the United States for
12 response costs that have been and will be incurred by the United
13 States in response to releases or threatened releases of hazardous
14 substances at the MGM Brakes Site located in Cloverdale, California.

15 WHEREAS, on September 29, 1988, the United States issued a Record
16 of Decision ("ROD," attached as Appendix A), which selected a remedy
17 with respect to the MGM Brakes Site.

18 WHEREAS, the Property constitutes a facility, as defined in
19 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20 WHEREAS, the Settling Defendants are persons, as defined in
21 Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and the Settling
22 Defendants are persons subject to liability under Section 107(a) of
23 CERCLA, 42 U.S.C. § 9607(a).

1 WHEREAS, the past, present, and potential migrations of hazardous
2 substances constitute actual and threatened "releases," as defined in
3 Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and wastes and
4 constituents thereof produced and disposed of at the Property are
5 "hazardous substances," as defined in Section 101(14) of CERCLA, 42
6 U.S.C. § 9601(14).

7 WHEREAS, the actions required by this Consent Decree are
8 necessary to protect the public health, welfare, and the environment.

9 WHEREAS, the remedial actions required by this Consent Decree are
10 in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621, and with
11 the National Oil and Hazardous Substances Pollution Contingency Plan,
12 40 C.F.R. Part 300, ("National Contingency Plan" or "NCP").

13 WHEREAS, remedial action alternatives for contaminated soil and
14 concrete at the Site other than off-Site disposal were fully analyzed
15 in the Feasibility Study for the Site and were proposed, within the
16 meaning of Section 122(f)(2)(A) of CERCLA, 42 U.S.C. § 9622(f)(2)(A).

17 WHEREAS, EPA determined that at least one of these proposed
18 remedial action alternatives, in addition to the off-Site disposal
19 remedy selected by EPA, is consistent with the NCP.

20 WHEREAS, these proposed remedial action alternatives were
21 rejected by the President, within the meaning of Section 122(f)(2)(A)
22 of CERCLA, 42 U.S.C. § 9622(f)(2)(A), when EPA selected off-Site
23 disposal to remedy the soil and concrete contamination at the MGM
24 Brakes Site.

1 WHEREAS, a special covenant not to sue pursuant to CERCLA Section
2 122(f)(2)(A) for the portion of the remedy which involves the
3 transport and secure disposition off-Site of hazardous substances in a
4 facility meeting the requirements of the Resource, Conservation, and
5 Recovery Act ("RCRA") Section 3004(c), (d), (e), (f), (g), (m), (o),
6 (p), (u), and (v), and RCRA Section 3005(c) is in the public interest,
7 expedites a response action consistent with the NCP, and such response
8 action has been approved by the President's delegatee, EPA.

9 WHEREAS, the special covenant not to sue found at Paragraph E of
10 Section XXV (Covenant Not To Sue) of this Consent Decree is effective
11 only if Settling Defendants meet certain requirements, including full
12 compliance with the terms of this Consent Decree.

13 WHEREAS, the special covenant not to sue found at Paragraph E of
14 Section XXV (Covenant Not To Sue) of this Consent Decree applies only
15 to future liability and takes effect only upon issuance by EPA of a
16 Certificate of Completion pursuant to Paragraph A of Section XXIX
17 (Completion of the Remedial Action).

18 WHEREAS, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, the
19 United States and the Settling Defendants have each stipulated and
20 agreed to the making and entry of this Consent Decree prior to the
21 taking of any testimony, based upon the pleadings herein.

22 WHEREAS, the United States and the Settling Defendants agree that
23 the settlement of this matter and entry of this Consent Decree is in
24 good faith, in an effort to avoid expensive and protracted litigation,
25 without any admission as to liability for any purpose.

1 NOW THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

2 I. DEFINITIONS

3 For the purposes of this Consent Decree, the following terms
4 shall have the meanings set forth below.

5 A. "Contractor(s)" shall mean any consultant, contractor, or
6 subcontractor retained by the Settling Defendants to undertake and
7 complete the RD/RA or any portion of the RD/RA.

8 B. "Environment" shall have the meaning set forth in CERCLA
9 Section 101(8), 42 U.S.C. § 9601(8).

10 C. "EPA" shall mean the United States Environmental Protection
11 Agency.

12 D. "Fund" or "Superfund" shall mean the Hazardous Substances
13 Superfund, created pursuant to Section 221 of CERCLA, 42 U.S.C.
14 § 9721.

15 E. "Future Liability" shall mean whatever obligations the
16 Settling Defendants may have to perform or pay for any additional
17 response activities at the Site, beyond those specified in the ROD
18 (Appendix A) and the Scope of Work (Appendix B), which are necessary
19 to protect human health and the environment. Settling Defendants'
20 Future Liability is subject to Section XXV (Covenant Not to Sue) of
21 this Consent Decree.

22 F. "Future Response Costs" shall mean all costs, including but
23 not limited to all administrative, enforcement, investigative,
24 remedial, removal, oversight and monitoring costs, incurred by the
25 United States in connection with the Site pursuant to Sections 104,
26

1 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, subsequent to
2 October 31, 1988 and prior to the termination of this Consent Decree.
3 Future Response Costs incurred in connection with the Site shall
4 include indirect costs, if it is EPA's policy at the time of
5 assessment to recover such costs.

6 G. "Oversight" shall mean the Plaintiff's inspection of
7 remedial work and all action taken pursuant to this Consent Decree to
8 verify the adequacy of Settling Defendants' performance pursuant to
9 the terms of this Consent Decree.

10 H. "Past Response Costs" shall mean all costs incurred by the
11 United States in connection with the Site pursuant to Sections 104,
12 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, prior to and
13 including October 31, 1988. Past Response Costs include, but are not
14 limited to, all administrative, enforcement, investigative, remedial
15 and removal, oversight and monitoring costs incurred before or on such
16 date.

17 I. "Parties" shall mean the United States and the Settling
18 Defendants.

19 J. "Plaintiff" shall mean the United States of America ("United
20 States").

21 K. "Property" shall mean Assessor's Parcels 38, 39 and 45 in the
22 County of Sonoma, California. These parcels are a part of the Site.

23 L. "RD/RA" shall mean the Remedial Design and the Remedial
24 Action necessary to implement the ROD.

1 M. "Record of Decision" ("ROD") shall mean the document signed
2 by the EPA Region IX Regional Administrator on September 29, 1988,
3 which describes the Remedial Action selected for the Site and which is
4 attached hereto as Appendix A.

5 N. "Release" shall have the meaning set forth in CERCLA Section
6 101(22), 42 U.S.C. § 9601(22).

7 O. "Remedial Action" ("RA") shall mean the implementation of the
8 Remedial Design to effectuate the remedy selected in the ROD, in
9 accordance with Section VII (Work to be Performed) of this Consent
10 Decree.

11 P. "Remedial Design" ("RD") shall mean the phase of the work
12 required by this Consent Decree wherein the engineering plans and
13 technical specifications are to be developed for implementation of the
14 Remedial Action, consistent with the ROD, this Consent Decree, and the
15 NCP.

16 Q. "Remedial Work" shall mean the RD and RA Tasks described in
17 the SOW.

18 R. "Settling Defendants" shall mean the defendants in this
19 action who are signatories to this Consent Decree.

20 S. "Scope of Work" shall mean the document attached to this
21 Decree as Appendix B, which contains a description of the Remedial
22 Design and Remedial Action tasks to be completed by Settling
23 Defendants pursuant to this Consent Decree, as it may be modified
24 pursuant to this Consent Decree.

25

26

1 T. "Site" shall mean the approximately five acres on the
2 southern edge of the municipality of Cloverdale, California, including
3 but not limited to Assessor's Parcels 38, 39 and 45 in the County of
4 Sonoma, California, and portions of adjacent parcels 62, 63, 72 and
5 71, where PCBs released from the Property have come to be located, and
6 any other parcels to which VOC-containing groundwaters have migrated.

7 U. "State" shall mean the State of California.

8 V. "Total Response Costs" shall mean (1) the costs of
9 implementing the RD/RA, (2) Past Response Costs, and (3) Future
10 Response Costs.

11 W. "Work Plans" shall mean the documents developed by the
12 Settling Defendants which detail the Remedial Work Tasks set forth in
13 the Scope of Work.

14 II. JURISDICTION

15 A. The Court has jurisdiction over the subject matter of this
16 Consent Decree and the Parties to this Decree.

17 B. The basis for the Court's subject matter jurisdiction
18 includes but is not limited to the Comprehensive Environmental
19 Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.,
20 as amended by the Superfund Amendments and Reauthorization Act of
21 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), ("CERCLA"), federal
22 question jurisdiction, and the status of the United States as
23 plaintiff. Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606,
24 9607, and 9613, and 28 U.S.C. §§ 1331, 1345.

1 C. Settling Defendants do not contest and agree not to contest
2 the jurisdiction of the United States to maintain this action
3 or the Court's jurisdiction to enter and enforce this Consent Decree.

4 III. PURPOSE

5 A. The purposes of this Consent Decree are: (1) to serve the
6 public interest by protecting the public health, welfare, and the
7 environment from releases and threatened releases of hazardous
8 substances at the Site through implementation of the Remedial Design
9 and Remedial Action ("RD/RA") as defined in Section I (Definitions)
10 and as set out in Section VII (Work to be Performed) of this Consent
11 Decree; and (2) to settle all claims in connection with the Site that
12 may be brought by the United States pursuant to CERCLA against the
13 Settling Defendants, except as provided in Section XVIII (Reservation
14 and Waiver of Rights) and Section XXV (Covenant Not to Sue) of this
15 Consent Decree.

16 IV. FINDINGS

17 A. All parties agree and the Court hereby determines that the
18 ROD, attached as Appendix A, sets forth all of the "relevant and
19 appropriate requirements" as those terms are defined in CERCLA Section
20 121(d), 42 U.S.C. § 9621(d), which the RD/RA contemplated by this
21 Consent Decree is required to meet.

22 B. For the purposes of this Consent Decree, the Court hereby
23 determines that the remedy selected by the ROD is consistent with
24 CERCLA and the NCP, 40 C.F.R. Part 300.

1 C. All parties agree and the Court hereby determines that the
2 Scope of Work as presently drafted, attached as Appendix B, is
3 consistent with CERCLA, the NCP, and the ROD.

4 V. PARTIES BOUND

5 A. This Consent Decree shall apply to and be binding upon the
6 United States and the Settling Defendants, including the Settling
7 Defendants respective divisions, successors and assigns.

8 B. Each undersigned representative of each Settling Defendant
9 certifies that he or she has provided a copy of this Consent Decree to
10 all directors (except directors who are not otherwise officers,
11 shareholders or employees of the respective Settling Defendants) and
12 to the principal officers responsible for overseeing the
13 implementation of this Consent Decree. For TBG, Inc., the "principal
14 officers" shall mean the persons holding the positions of President
15 and Vice-President/General Counsel. For Indian Head Industries, Inc.,
16 the "principal officers" shall mean the persons holding the positions
17 of President and Vice President of Finance.

18 C. If the Property is transferred prior to this Consent Decree's
19 termination and satisfaction pursuant to Section XXXV (Termination and
20 Satisfaction), Settling Defendants agree to provide a copy of this
21 Consent Decree to any successor in interest or assign of the Property
22 prior to the transfer of the Property. Within ten (10) working days
23 of providing a copy of this Consent Decree to any such successor in
24 interest or assign, Settling Defendants shall notify EPA that it has
25
26

1 done so. Such notice shall include a list of the names and work
2 addresses of the persons provided with a copy pursuant to this
3 Paragraph C.

4 D. All persons retained by the Settling Defendants to perform
5 any portion of the Remedial Work and any subcontractors to such
6 persons shall be deemed to be related by contract to the Settling
7 Defendants within the meaning of Section 107(b)(3) of CERCLA, 42
8 U.S.C. § 9607(b)(3). Thus, with respect to any such persons or
9 subcontractors, the Settling Defendants agree not to assert a defense
10 based on CERCLA Section 107(b)(3), 42 U.S.C. § 9607(b)(3).

11 E. Settling Defendants agree that they are jointly and severally
12 liable for compliance with all provisions of this Consent Decree. In
13 the event of inability to pay or the insolvency of any of the Settling
14 Defendants, regardless of whether any such Settling Defendant(s)
15 enter(s) into formal bankruptcy proceedings, or in the event that for
16 any reason any of the Settling Defendants do not participate in the
17 implementation of the RD/RA, the remaining Settling Defendant(s)
18 agree(s) to fully comply with the terms and conditions of this Consent
19 Decree.

20 VI. SITE BACKGROUND

21 A. The MGM Brakes Site ("Site") presently covers approximately
22 five acres at the southern edge of the municipality of Cloverdale,
23 California. The Site includes but is not limited to the real property
24
25
26

1 consisting of Assessor's Parcels 38, 39 and 45 ("the Property") and
2 portions of the adjacent Assessor's Parcels 62, 63, 72 and 71 in the
3 County of Sonoma.

4 B. A casting plant located on Parcel 45 of the Property
5 ("Casting Plant") has been in operation from 1965 to the present.
6 From the period 1965 to 1972, hydraulic fluids containing
7 polychlorinated biphenyls ("PCBs") were used in the Casting Plant to
8 operate casting machines which cast brake components for large motor
9 vehicles. These hydraulic fluids leaked from the casting machines in
10 the normal course of Casting Plant operations and were then collected,
11 together with water used to cool the dies between castings, in floor
12 drains. Following gravity separation of oils and grease, this
13 wastewater containing PCBs was discharged, via a drain line, to the
14 ground adjacent to the Casting Plant. The use of hydraulic fluid
15 containing PCBs was gradually discontinued in 1973, but wastewater
16 containing ethylene glycol (the hydraulic fluid later used in the
17 casting machines) continued to be discharged in the same manner until
18 1981.

19 C. Clover Casting Co., a now-defunct California corporation,
20 purchased Parcel 45 in 1965. This company began the casting
21 operation. MGM Brakes, Inc., a now-defunct California corporation,
22 purchased Parcels 38 and 39 in 1967. In 1970, with the merger of
23 Clover Casting Co. and MGM Brakes, Inc. into Indian Head, Inc., the
24 Property was brought under single ownership.

1 D. In 1976, Indian Head, Inc. merged with Thyssen-Bornemisza
2 Holdings, Inc., a Delaware corporation. The resulting corporate
3 entity was named Indian Head, Inc. In 1983, the name of Indian Head,
4 Inc. was changed to Thyssen-Bornemisza, Inc., and the Property was
5 transferred to Cloverdale Castings, Inc., a Delaware corporation and
6 wholly-owned subsidiary of Thyssen-Bornemisza, Inc.

7 E. In 1984, Indian Head Industries, Inc. was incorporated in
8 Delaware and purchased the assets of the MGM Brakes Division of
9 Thyssen-Bornemisza, Inc. (now TBG, Inc.), with the exception of the
10 Property. Indian Head Industries, Inc. rents a portion of the
11 Property from TBG, Inc., and is the present operator of the Casting
12 Plant.

13 F. In 1985, Thyssen-Bornemisza, Inc. changed its name to TBG,
14 Inc. TBG, Inc. presently owns the Property. TBG Holdings, N.V. is
15 the parent company of TBG, Inc.

16 G. The Site was proposed for inclusion on the National
17 Priorities List ("NPL") in December of 1982, and was subsequently
18 placed on the NPL on September 8, 1983, in accordance with Section
19 105(a)(8) of CERCLA, 42 U.S.C. § 9605(a)(8).

20 H. PCBs have been detected in soils on the Property and
21 immediately off the Property on the adjacent parcels. Sediments in
22 groundwater samples from one well on the Property have shown PCBs.
23 Chlorobenzene and 1,4 Dichlorobenzene, which are commonly associated
24 with PCBs, have been detected in concentrations below Federal Safe
25 Drinking Water Act Maximum Contaminant Levels ("MCLs") in wells on and
26

1 immediately off the Property. PCB, Chlorobenzene, and 1,4
2 Dichlorobenzene are hazardous substances as defined in Section 101(14)
3 of CERCLA, 42 U.S.C. § 9601(14). PCB is toxic and causes cancer in
4 laboratory animals; it is a probable human carcinogen. 1,4
5 Dichlorobenzene is toxic and a probable human carcinogen.
6 Chlorobenzene is toxic.

7 I. Volatile organic compounds ("VOCs") have been detected in
8 groundwater at the Eastern boundary of the Property and in groundwater
9 downgradient of the Property on Parcels 62 and 63. These include
10 Benzene, Vinyl Chloride, Trichloroethylene ("TCE"), 1,1
11 Dichloroethylene, ("1,1 DCE"), and 1,2 Dichloroethylene ("1,2 DCE").
12 TCE, 1,2 DCE, 1,1 DCE, Vinyl Chloride, and Benzene are hazardous
13 substances as defined in Section 101(14) of CERCLA, 42 U.S.C. §
14 9601(14). 1,1 DCE is toxic and is a probable human carcinogen.
15 Vinyl Chloride and Benzene are toxic and are known human carcinogens.
16 1,2 DCE is toxic.

17 J. There have been releases of hazardous substances into the
18 environment at the Site, and the Site poses or potentially poses a
19 threat to human health and the environment. Surface and subsurface
20 soils and air at the Site have been shown to contain PCBs, thus posing
21 or potentially posing a threat to humans and animals at or near the
22 Site through exposure via inhalation, ingestion, and direct contact.
23 Drainage ditches located on Parcels 71 and 72, which carry surface
24 run-off water from the Property, have been shown to contain PCBs, both
25 in sediment samples and in sediments in surface water samples taken
26

1 from the drainage ditches downstream from the Property. These drainage
2 ditches are waters of the United States and they eventually discharge
3 into the Russian River.

4 K. The Remedial Action selected in the ROD is necessary to
5 mitigate the threats posed by the presence of PCBs in soil, drainage
6 sediments and the air at the Site and the presence of VOCs in the
7 groundwater at the Site.

8 L. The levels of TCE, Vinyl Chloride and Benzene in groundwater
9 at the east boundary of the Property and immediately downgradient from
10 the Property on Parcels 62 and 63 exceed MCLs for drinking water.
11 Thus, these chemicals pose a potential threat to downgradient drinking
12 water sources and a potential threat to future drinking water sources.

13 M. The Settling Defendants do not concur with Plaintiff's
14 assessment of the potential risks to human health or the environment
15 posed by the Site. Therefore, nothing in this Consent Decree is
16 intended by the Parties to be, nor shall it be, construed as an
17 acknowledgment by the Settling Defendants that the release or
18 threatened release of PCBs from the Property or the presence of VOCs
19 in groundwater downgradient of the Property constitutes a threat or an
20 imminent and substantial endangerment to the public health or welfare
21 or the environment.

22 N. The entering of this Consent Decree and compliance by the
23 Settling Defendants with it, or with any determination or agreement
24 made pursuant to it, shall not be considered an admission of liability
25 for any purpose other than enforcement of this Consent Decree.

26

1 O. Nothing in this Consent Decree is intended by the Parties to
2 be, nor shall it be, construed as an admission of fact or law or an
3 estoppel or waiver of defenses by the Settling Defendants for any
4 purpose other than enforcement of this Consent Decree (including any
5 collection proceeding pursuant to Paragraph A.8 of Section XIX
6 (Stipulated Penalties). This Consent Decree shall not be admissible
7 into evidence in any proceeding unrelated to this Consent Decree, with
8 the exceptions that this Decree may be admissible, for the sole
9 purpose of establishing the obligations of Settling Defendants
10 hereunder, in a judicial or administrative proceeding (1) between the
11 Settling Defendants and any insurance company concerning the
12 obligation of such insurance company to pay any amounts expended by
13 the Settling Defendants; and (2) against any non-party to this action
14 for contribution or other relief.

15 VII. WORK TO BE PERFORMED

16 A. General Obligations

17 1. The Settling Defendants agree, jointly and severally, at
18 their own expense, to finance and implement the remedy selected by EPA
19 for the Site as set out in the Record of Decision ("ROD"). The work
20 to be performed by Settling Defendants in satisfaction of their
21 obligations hereunder is set forth in the Scope of Work attached
22 hereto as Appendix B, which contains the applicable cleanup and
23 performance standards, the required deliverables, and the schedules
24 for such deliverables. The ROD and the Scope of Work are hereby
25 incorporated into this Consent Decree. If at any time EPA determines
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1 that the Scope of Work does not fully implement the ROD, and Settling
2 Defendants concur, or if the Parties otherwise agree that the Scope of
3 Work should be modified in a manner consistent with the ROD, the
4 Parties shall modify the Scope of Work accordingly. If EPA determines
5 that the Scope of Work does not fully implement the ROD and the
6 Settling Defendants disagree, EPA may issue a revised Scope of Work
7 containing the modifications EPA determines are necessary to implement
8 the ROD or EPA may await the outcome of dispute resolution on this
9 issue. If EPA chooses to issue a revised Scope of Work containing the
10 modifications EPA determines are necessary to implement the ROD, the
11 Settling Defendants may dispute, through the dispute resolution
12 mechanisms contained in Section XX (Dispute Resolution) of this
13 Consent Decree, EPA's determination(s) regarding the changes necessary
14 to implement the ROD; provided however that failure to comply with the
15 requirements of the modified Scope of Work during the dispute
16 resolution process shall constitute noncompliance with this Consent
17 Decree and shall be subject to stipulated penalties pursuant to
18 Section XIX (Stipulated Penalties) of this Consent Decree. If the
19 Parties agree to modify the Scope of Work, or it is determined as a
20 result of Dispute Resolution that the Scope of Work should be modified
21 and EPA has not already issued a modified Scope of Work, then EPA
22 shall, in its discretion, ~~either issue a revised Scope of Work or~~
23 request the Settling Defendants to prepare a revised Scope of Work
24 within a specified timeframe, for EPA's review and approval.

1 2. After negotiating with the Settling Defendants regarding the
2 Scope of Work, EPA has exercised its best efforts to include in the
3 Scope of Work at the time of execution of this Consent Decree all work
4 necessary to implement the ROD. However, the Parties acknowledge and
5 agree that the Scope of Work and the Remedial Work deliverables to be
6 submitted pursuant thereto do not constitute a warranty or
7 representation, either express or implied, by Plaintiff that the
8 implementation of the Scope of Work will achieve the performance goals
9 and standards set forth in the ROD and the Scope of Work and shall not
10 foreclose Plaintiff from seeking performance of all terms and
11 condition of this Consent Decree and complete implementation of the
12 ROD.

13 3. The Settling Defendants hereby consent to the terms of this
14 Decree, and hereby knowingly, willingly, and with advice of counsel,
15 waive any and all rights to appeal the entry of this Consent Decree.

16 4. The Settling Defendants shall perform the Remedial Work in a
17 manner consistent with the National Contingency Plan, 40 C.F.R. Part
18 300, and with any standards, specifications, and schedule of
19 completion set forth herein or approved by the EPA pursuant to this
20 Consent Decree.

21 5. Performance of the Remedial Work by Settling Defendants
22 pursuant to this Consent Decree shall be under the direction and
23 supervision of:

1 Project Coordinator:

2 Theodore G. Erler, III
3 Erler & Kalinowski, Inc.
4 1730 S. Amphlett Blvd., Suite 320
5 San Mateo, California 94402
6 (415) 578-1172

7 Project Engineer:

8 James W. Babcock
9 Canonic Environmental Services Corp.
10 1825 South Grant Street, Suite 260
11 San Mateo, California 94402
12 (415) 573-8012

13 6. EPA approves of Settling Defendants' selection of Theodore
14 G. Erler, of Erler & Kalinowski, as Project Coordinator and James W.
15 Babcock, of Canonic Environmental Services Corp., as project engineer.
16 Both are qualified to direct and supervise the performance of the
17 Remedial Work.

18 7. Settling Defendants may, at their discretion, select
19 different engineering firms to direct and supervise the performance of
20 the Remedial Work. If Settling Defendants wish to propose a new
21 engineering firm, they shall notify EPA in writing of the name, title,
22 and qualifications of the proposed engineering firm, and the names of
23 principal contractors and/or subcontractors (including laboratories)
24 proposed to be used in performing the Remedial Work required by this
25 Consent Decree. Any such engineering firm, contractors,
26 subcontractors, and/or laboratories shall be subject to approval by
EPA. EPA shall indicate its approval or disapproval within twenty
(20) days of receiving from Settling Defendants the information
required by this paragraph.

1 8. The Settling Defendants shall appoint a Project Coordinator
2 authorized by them to act on their behalf, in accordance with Section
3 XI (Project Coordinators).

4 9. The RA to be performed by the Settling Defendants pursuant
5 to this Consent Decree shall meet the substantive standards of all
6 "applicable" and/or "relevant and appropriate" requirements
7 (collectively, "ARARs"). The Settling Defendants shall comply with
8 all ARARs during performance of the RA, but need not obtain permits
9 for Remedial Work conducted on the Site. The Parties agree to the
10 following:

11 a. that the ROD contains all of the "relevant and appropriate"
12 requirements that the Settling Defendants are required to meet in
13 performing the RA;

14 b. that the regulations found at 40 C.F.R. Part 761, which were
15 adopted pursuant to the Toxic Substances Control Act ("TSCA"), are
16 applicable to the handling of soil and concrete at the Site that is
17 contaminated with PCBs;

18 c. and that the identification of provisions of RCRA in the ROD
19 as "relevant and appropriate" requirements was not meant to, and shall
20 not be construed to, require the Settling Defendants to meet such RCRA
21 requirements in handling soil and concrete at the Site that are
22 contaminated with PCBs; nevertheless, Settling Defendants shall comply
23 with the TSCA requirements referenced in subparagraph 9.b above, in
24 handling soil and concrete at the site that are contaminated with

1 PCBs. However, Settling Defendants must meet any applicable RCRA
2 requirements, including any requirements applicable to soils and
3 concrete contaminated with both PCBs and VOCs.

4 B. Permits

5 1. This Consent Decree is not to be construed as, and is not
6 intended by the Parties to be, a permit issued pursuant to any Federal
7 or State statute or regulation.

8 2. Notwithstanding any other provision of this Consent Decree,
9 no Federal, State or local permits shall be required for any portion
10 of the RD/RA conducted entirely on the Site; however, the substantive
11 requirements of the ARARs stated in the ROD must be met. CERCLA
12 Section 121(d), (e), 42 U.S.C. § 9621(d), (e). The Settling
13 Defendants shall obtain all permits, variances, and approvals
14 necessary under Federal, State, or local laws for conducting the
15 Remedial Work off of the Site and shall submit timely applications and
16 requests for any such permits, variances, and approvals. The off-Site
17 storage, treatment, or disposal of hazardous substances and hazardous
18 wastes removed from the Site and/or generated during the RD/RA shall
19 comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and
20 with EPA's policy on off-site disposal as described in the November
21 1987 memorandum entitled "Revised Procedures for Planning and
22 Implementing Off-Site Response Actions" (copy provided to Settling
23 Defendants), or any final amended or superseding version of this
24 document.

1 C. General Plans

2 The Settling Defendants shall develop and submit to EPA for
3 comment a Health and Safety Plan and for approval Quality Control and
4 Quality Assurance Plans as described in Appendix B (Scope of Work).
5 These Plans shall comply with the requirements specified in Sections
6 IX (Health and Safety Plan) and X (Quality Assurance/Quality Control
7 Plans) of this Consent Decree.

8 D. Reports and Deadlines

9 1. Any reports, plans, specifications, or schedules submitted to
10 EPA by Settling Defendants pursuant to this Consent Decree or the
11 Scope of Work, as approved by EPA, are incorporated into this Decree.

12 2. Except where otherwise noted, all dates referred to in this
13 Consent Decree or any appendices or modifications thereto are calendar
14 days; however, should a deadline fall on a weekend or a Federal
15 holiday, the deadline shall be construed to continue to the next
16 federal working day.

17 3. The Settling Defendants and their Contractors shall submit
18 all reports or plans required by this Consent Decree or the Scope of
19 Work to EPA in a timely manner and in accordance with the applicable
20 deadlines contained in this Consent Decree and the Scope of Work.

21 4. The Remedial Design deliverables required by the Scope of
22 Work shall comply with the EPA Superfund Remedial Design and Remedial
23 Action Guidance, OSWER Directive 9355.04A, dated June 1986 ("RD/RA
24 Guidance") (copy provided to Settling Defendants).

1 VIII. EPA PERFORMANCE OF THE RD/RA

2 A. In the event EPA alleges that the Settling Defendants have
3 failed to perform all or a part of the Remedial Work in an adequate or
4 timely manner, EPA may elect to perform all or a part of the RD/RA
5 pursuant to this Section VIII, provided that before performing all or
6 any portion of the RD/RA, EPA shall take the following steps:

7 1. First, EPA shall provide the Settling Defendants with written
8 notice of the alleged deficiency in Settling Defendants' performance
9 of the Remedial Work. In the notice of deficiency, EPA shall describe
10 the alleged deficiency and state an adequate time period (the "Cure
11 Period") within which Settling Defendants may attempt to cure the
12 deficiency. EPA may assess stipulated penalties by the same notice
13 provided the notice satisfies the requirements of Paragraph A.5 of
14 Section XIX (Stipulated Penalties) of this Consent Decree. During a
15 Cure Period, stipulated penalties shall accrue pursuant to Section XIX
16 (Stipulated Penalties) for all violations of this Consent Decree by
17 Settling Defendants, including those which are subject to the Cure
18 Period.

19 2. If after receiving EPA's notice of deficiency Settling
20 Defendants attempt to cure the deficiency without invoking the
21 informal dispute resolution procedures of Section XX (Dispute
22 Resolution) of this Consent Decree or during informal dispute
23 resolution, the Cure Period shall be the time period stated in the
24 notice of deficiency and it shall begin to run upon Settling
25 Defendants' receipt of EPA's notice of deficiency. Settling
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1 Defendants shall notify EPA within five (5) working days of receipt of
2 the notice of deficiency whether they intend to cure during the Cure
3 Period provided in the notice of deficiency and/or to invoke informal
4 dispute resolution. If after receiving EPA's notice of deficiency,
5 Settling Defendants dispute in whole or in part EPA's allegations of a
6 deficiency, or after attempting to cure the deficiency, Settling
7 Defendants dispute in whole or in part EPA's determination whether the
8 deficiency has been corrected, Settling Defendants may invoke the
9 informal dispute resolution procedures of Section XX. If, following
10 the Informal Period, as that term is defined in Section XX, EPA
11 continues to allege that Settling Defendants' performance of the
12 Remedial Work is deficient, the Cure Period shall be the time period
13 stated in EPA's statement of decision issued after the Informal
14 Period, and shall begin to run upon Settling Defendants' receipt of
15 EPA's statement of decision; provided, however, that EPA shall not
16 provide Settling Defendants with a Cure Period after the Informal
17 Period if Settling Defendants have notified EPA of their intent to
18 cure within the Cure Period provided in the notice of deficiency.

19 3. Third, if Settling Defendants fail to cure the alleged
20 deficiency during the Cure Period, and, if Settling Defendants have
21 invoked informal dispute resolution, the Informal Period has ended,
22 and EPA elects to perform all or a part of the RD/RA, EPA shall give
23 Settling Defendants notice of its intent to perform all or a part of
24 the RD/RA.

1 B. Notwithstanding the provisions of Paragraph A of this Section
2 VIII, EPA may perform the RD/RA at any time if it determines that an
3 immediate and significant threat to public health or the environment
4 exists, in which case EPA may perform that portion of the RD/RA
5 necessary to respond to the immediate and significant threat. Once
6 the immediate and significant threat has been abated, EPA shall return
7 to the procedures set forth in Paragraph A of this Section VIII. In
8 the event that EPA decides to take over the RD/RA pursuant to this
9 Paragraph B, EPA shall make every reasonable attempt to provide
10 Settling Defendants with oral notice of its intent to respond pursuant
11 to this Paragraph B, and shall follow that notice with written notice
12 as soon as possible.

13 C. If EPA assumes performance of the RD/RA pursuant to and in
14 accordance with Paragraph A or B of this Section VIII, Settling
15 Defendants shall pay Future Response Costs in accordance with
16 Paragraph A.2 of Section XVI (Reimbursement of Future Response Costs).
17 If EPA assumes performance of the RD/RA pursuant to and in accordance
18 with Paragraph A of this Section VIII, Settling Defendants shall also
19 pay a Work Assumption Penalty, in accordance with Paragraph A.11 of
20 Section XIX (Stipulated Penalties).

21 D. Nothing in this Section VIII shall limit EPA 's right to take
22 over the RD/RA pursuant to its reservation of rights in Section XVIII
23 (Reservation and Waiver of Rights) of this Consent Decree.
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1 IX. HEALTH AND SAFETY PLAN

2 A. The Health and Safety Plan the Settling Defendants are
3 required to submit pursuant to Section VII (Work to be Performed) of
4 this Consent Decree shall satisfy the requirements of the Occupational
5 Safety and Health Guidance for Hazardous Waste Site Activities
6 (October 1985 (DHH 5 NIOSH) Publication No. 85-115) and EPA's Standard
7 Operating Safety Guides. The Health and Safety Plan shall address the
8 potential exposure of workers at the Site and the public to potential
9 releases at and from the Site during performance of the Remedial Work.
10 The Settling Defendants shall implement the Worker Health and Safety
11 Plan after consideration of any comments provided by EPA.

12 X. QUALITY ASSURANCE/QUALITY CONTROL PLANS

13 A. Settling Defendants shall prepare and submit the Quality
14 Assurance Project Plans ("QAPPs") required by Section VII (Work to be
15 Performed) of this Consent Decree in accordance with applicable
16 provisions of the Interim Guidelines and Specifications for Preparing
17 Quality Assurance Project Plans, QAMS-005/80 (copy provided to
18 Settling Defendants), and, as required by EPA, Documentation
19 Requirements for Data Validation of Non-CLP Laboratory Data for
20 Organic and Inorganic Analyses (U.S. EPA Region 9, May, 1988) (copy
21 provided to Settling Defendants), and any final amended or superseding
22 version of these documents, upon EPA's providing such to Settling
23 Defendants, provided, however, that the requirements of any amended or
24 superseding version of these documents shall not apply retroactively,
25 and EPA shall provide Settling Defendants with a reasonable amount of
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1 time to amend their QAPPs to conform to any new requirements contained
2 therein. Settling Defendants also agree to comply with the Region 9
3 EPA Quality Assurance Project Plan Guidance, within a reasonable
4 amount of time of EPA's providing such guidance to Settling
5 Defendants.

6 B. The Settling Defendants shall use Quality Assurance and
7 Quality Control procedures in accordance with the QAPPs submitted to
8 and approved by EPA pursuant to this Consent Decree, and shall utilize
9 standard EPA chain of custody procedures, as documented in the
10 National Enforcement Investigations Center Policies and Procedures
11 Manual as revised in June 1985 (copy provided to Settling Defendants),
12 and the National Enforcement Investigations Center Manual for the
13 Evidence Audit, published in September 1981 (copy provided to Settling
14 Defendants), for all sample collection and analysis activities, unless
15 other procedures are approved by EPA.

16 C. The Settling Defendants and persons acting on their behalf
17 shall utilize EPA methods or methods deemed satisfactory by EPA when
18 performing any analyses of samples pursuant to this Consent Decree.
19 The methods to be used shall be described in the QAPPs required by
20 Section VII (Work to be Performed) of this Consent Decree. Submission
21 of sampling results based on analytical methods other than those
22 specified in the QAPP shall constitute a violation of this Consent
23 Decree.

1 D. In order to provide quality assurance and maintain quality
2 control regarding all samples collected by Settling Defendants
3 pursuant to this Consent Decree, the Settling Defendants shall:

4 1. Ensure that all contracts with laboratories utilized by
5 the Settling Defendants for analysis of samples taken pursuant to this
6 Consent Decree provide for access by EPA personnel and EPA authorized
7 representatives to assure the accuracy of laboratory results related
8 to the Site.

9 2. Ensure that all contracts with laboratories utilized by
10 the Settling Defendants for analysis of samples taken pursuant to this
11 Consent Decree require that the laboratory perform all such analyses
12 according to the methods contained in the relevant, approved QAPP.

13 3. Ensure that all laboratories utilized by the Settling
14 Defendants for analysis of samples taken pursuant to this Consent
15 Decree participate in an EPA or EPA-equivalent QA/QC program. As part
16 of the QA/QC program and upon request by EPA, such laboratories shall
17 perform, at Settling Defendants' expense, analyses of samples provided
18 by EPA as reasonably necessary to demonstrate the quality of each
19 laboratory's data.

20 XI. PROJECT COORDINATORS

21 A. By the effective date of this Consent Decree, EPA and the
22 Settling Defendants each shall designate a Project Coordinator to
23 monitor the progress of Remedial Design and the Remedial Action, to
24 coordinate communication between the EPA Project Coordinator and the
25 Settling Defendants, and to oversee the implementation of this Consent
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1 Decree. EPA and the Settling Defendants shall notify each other of
2 their respective Project Coordinators in writing within seven (7)
3 calendar days of the effective date of this Consent Decree. EPA and
4 the Settling Defendants each may change their respective Project
5 Coordinators at any time; such a change shall be accomplished by
6 notifying the other party in writing at least five (5) calendar days
7 prior to the change. To the maximum extent possible, communications
8 between the Settling Defendants and EPA as well as all documents,
9 including reports, approvals, and other correspondence concerning the
10 activities performed pursuant to the terms and conditions of this
11 Consent Decree, shall be directed through the Project Coordinators.

12 B. The EPA Project Coordinator will be an EPA employee and
13 shall have the authority vested in the On-Scene Coordinator by 40
14 C.F.R. § 300 et seq., as amended from time to time, and the authority
15 to ensure that the Remedial Work is performed in accordance with all
16 applicable statutes and regulations, and this Consent Decree.

17 C. The EPA Project Coordinator shall have the authority to
18 require a cessation of the performance of the RD/RA or any other
19 activity related to the Site that, in the opinion of the EPA Project
20 Coordinator, may cause or contribute to an endangerment to public
21 health or welfare, or the environment, or persons on the Site,
22 including employees, contractors, or subcontractors, or cause or
23 threaten to cause a non-de minimus release of hazardous substances
24 from the Site.

1 D. Neither the absence of the the EPA Project Coordinator from
2 the Site nor the lack of availability of the EPA Project Coordinator
3 by telephone shall in itself be cause for cessation of the Remedial
4 Work. Notwithstanding the foregoing, in the absence or lack of
5 availability by telephone of the EPA Project Coordinator, Settling
6 Defendants' Project Coordinator may cease the Remedial Work where such
7 cessation is necessary to abate an immediate risk of harm to public
8 health (including Site workers) or the environment. Settling
9 Defendants' Project Coordinator shall notify the EPA Project
10 Coordinator by telephone as soon as possible that work has been
11 discontinued. Furthermore, within two working days after cessation of
12 the Remedial Work, Settling Defendants shall submit to EPA a written
13 explanation of why work was discontinued. Should a disagreement arise
14 between EPA and the Settling Defendants concerning the validity of the
15 Settling Defendants' decision to discontinue the Remedial Work, the
16 dispute shall be resolved in accordance with the provisions of Section
17 XX (Dispute Resolution) of this Consent Decree.

18 E. If either Project Coordinator requires a cessation of the
19 performance of the Remedial Work pursuant to Paragraphs C or D of this
20 Section, EPA shall modify the Scope of Work and any related documents
21 to provide such additional time as EPA finds may be necessary to allow
22 completion of the specific phase of the Remedial Work and/or any
23 succeeding phase of the Remedial Work affected by such delay, with
24 such additional time not to be less than the actual duration of the
25 delay (including and allowing for time necessary to remobilize
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1 resources and resume work), provided that any cessation of performance
2 by the Settling Defendants' Project Coordinator will not result in
3 additional time for completion of the Remedial Work if such cessation
4 was not justified. Should a disagreement arise between EPA and the
5 Settling Defendants regarding EPA's finding regarding the amount of
6 additional time necessary, the dispute shall be resolved in accordance
7 with the provisions of Section XX (Dispute Resolution) of this Consent
8 Decree.

9 F. Settling Defendants' Project Coordinator may designate other
10 representatives, including contractors, to serve as a designated
11 representative of the Project Coordinator to oversee performance of
12 daily operations during Remedial Work or to perform other specified
13 duties of the Project Coordinator. The representatives shall have
14 the qualifications and authority appropriate to carry out the
15 designated duties.

16 G. The EPA Project Coordinator may designate other
17 representatives, including other EPA employees or contractors, to
18 serve as a designated representative of the Project Coordinator to
19 oversee performance of daily operations during Remedial Work or to
20 perform other specified duties of the Project Coordinator. The
21 representatives shall have the qualifications and authority
22 appropriate to carry out the designated duties.

1 XII. SITE ACCESS

2 A. To the extent that the Site and/or other areas identified as
3 locations where the Remedial Work is to be performed are presently
4 owned or controlled by persons other than the Settling Defendants, or
5 to the extent that access to or easements over property are required
6 for the proper and complete performance of the Remedial Work, Settling
7 Defendants shall seek to obtain access agreements from the present
8 owners and lessees, or such other persons who have control, of such
9 property, within sixty (60) calendar days of the effective date of
10 this Consent Decree. If other areas are later identified as locations
11 where the Remedial Work is to be performed, the Settling Defendants
12 shall seek to obtain access agreements from the present owners and
13 lessees, or such other persons who have control, of such property,
14 within sixty (60) calendar days of such other areas being identified
15 as locations where the Remedial Work is to be performed. Site access
16 agreements shall provide the access described in Paragraph B of this
17 Section to Settling Defendants, contractor(s), the United States and
18 any of its agencies, the State of California, State and local
19 agencies, and their respective representatives.

20 B. The access referred to in Paragraph A of this Section shall
21 consist of access for the following purposes:

- 22 1. Monitoring the progress of the Remedial Work;
23 2. Verifying any data or information submitted by
24 Settling Defendants to EPA;

1 3. Conducting investigations relating to contamination at
2 or near the Site;

3 4. Obtaining samples at the Site.

4 C. In the event that sufficient Site access agreements are not
5 obtained within the sixty (60) day period, the Settling Defendants
6 shall notify EPA within sixty-five (65) calendar days of the effective
7 date of this Consent Decree regarding both the lack of, and efforts to
8 obtain, such agreements. If necessary, EPA may exercise its legal
9 authority to assist the Settling Defendants in obtaining access. In
10 the event EPA exercises its access authorities under CERCLA Section
11 104, 42 U.S.C. § 9604, in order to obtain access for the performance
12 of any act required by this Consent Decree, the Settling Defendants
13 shall reimburse EPA for the amount of any costs incurred in the
14 exercise of such powers.

15 D. During the effective period of this Consent Decree, the
16 United States, the State of California, and their representatives,
17 including contractors, shall have access to the Site and any
18 contiguous property owned or controlled by Settling Defendants for any
19 activity authorized by this Consent Decree, including, but not limited
20 to:

21 1. Monitoring the progress of Remedial Work activities;

22 2. Verifying any data or information submitted by
23 Settling Defendants to EPA;

24 3. Conducting investigations relating to contamination
25 at or near the Site;

- 1 4. Obtaining samples at the Site; and
- 2 5. Inspecting and copying records available to the
- 3 U.S. or the State of California pursuant to
- 4 Section XIII (Submission and Availability of
- 5 Documents - Sampling and Analysis) of this Consent
- 6 Decree.
- 7 6. Conducting RD/RA activities in the event that EPA
- 8 undertakes such activities pursuant to Section
- 9 XVIII (EPA Performance of the RD/RA).

10 Any person desiring to obtain access pursuant to this Paragraph shall
11 notify the Settling Defendants' Project Coordinator at least
12 twenty-four (24) hours in advance, provided, however, that EPA,
13 exercising best efforts, may determine under appropriate circumstances
14 that less notice by EPA is necessary. The Parties agree that EPA need
15 not provide advance notice for access to obtain split samples to
16 assure that Settling Defendants are adhering to the approved Quality
17 Assurance Project Plans and Sampling Plans.

18 E. Any person obtaining access to the Site or other property
19 pursuant to this Section XII (Site Access) shall comply with all
20 applicable provisions of the Health and Safety Plan required by this
21 Decree.

22 F. The access provided pursuant to this Section XII is in
23 addition to, and not in lieu of, any rights of access granted to EPA
24 by statute.

1 XIII. SUBMISSION AND AVAILABILITY OF DOCUMENTS

2 SAMPLING AND ANALYSIS

3 A. The Settling Defendants shall provide to EPA the results of
4 all sampling and analysis performed pursuant to the Additional Studies
5 Sampling Plans within seven (7) calendar days of obtaining written
6 data sheets containing such results. The Settling Defendants shall
7 provide to EPA any other analytical, technical, or design data
8 generated or obtained by Settling Defendants in the course of
9 implementing this Consent Decree within seven (7) working days of any
10 written request by EPA if such data are in the possession of the
11 Settling Defendants at the time of EPA's request and as soon as
12 possible thereafter if such data are not in Settling Defendants'
13 possession at the time of EPA's request. EPA shall provide to the
14 Settling Defendants: (1) the results of any sampling it conducts at
15 the Site within seven (7) calendar days of the EPA Project
16 Coordinator's receipt of such results from the EPA laboratory; and (2)
17 other technical data generated by EPA with respect to the Site, within
18 seven (7) calendar days of receiving a request for such data from the
19 Settling Defendants; provided, however, that EPA shall not be required
20 to provide any sampling results or technical data to Settling
21 Defendants if such information is protected from disclosure by 5
22 U.S.C. § 552(b)(7).

23 B. Under the provisions of Section 104(e) of CERCLA, 42 U.S.C.
24 § 9604(e), EPA explicitly reserves the right to observe Settling
25 Defendants perform the Remedial Work. In addition, at the request of
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1 EPA's Project Coordinator, Settling Defendants shall allow split or
2 replicate samples to be taken by EPA and/or its authorized
3 representatives, of any samples collected for purposes of this Consent
4 Decree by the Settling Defendants or anyone acting on Settling
5 Defendants' behalf.

6 C. Pursuant to CERCLA Section 104, 42 U.S.C. § 9604, Plaintiff
7 shall have the right to take any samples it deems necessary or
8 appropriate to complete or monitor the progress of the RD/RA. At the
9 request of the Settling Defendants, Plaintiff shall provide split or
10 duplicate samples of samples collected by Plaintiff and the analytical
11 results obtained from the samples, including split samples, that
12 Plaintiff takes at the Site. If Plaintiff collects any samples, or
13 undertakes any other testing work for purposes of the RD/RA, it will
14 notify the Settling Defendants' Project Coordinator at least two (2)
15 working days in advance, unless Plaintiff determines that such notice
16 is inappropriate, under the circumstances, where it seeks to obtain
17 split samples to assure that Settling Defendants are adhering to the
18 approved Quality Assurance Project Plan and Sampling Plans.

19 D. Within seven (7) days after notice of EPA's approval of any
20 sampling plan or portion thereof, (including the schedule for
21 implementation), Settling Defendants shall notify EPA of the intended
22 date of commencement of the sampling plan, including any changes in
23 the date of commencement of the sampling. Deviation from the approved
24 sampling plan shall only occur with prior approval by the EPA Project
25 Coordinator or the representative designated pursuant to Paragraph G
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1 of Section XI (Project Coordinators). The EPA Project Coordinator or
2 designated representative shall indicate such approval by notation in
3 the Settling Defendants field notes, or in a prior writing to Settling
4 Defendants' Project Coordinator. Settling Defendants shall not
5 dispose of any portion of a sample remaining after testing prior to
6 ninety (90) days after the results of analysis of the sample have been
7 reported to EPA. Prior to the time for disposal, EPA shall notify the
8 Settling Defendants' Project Coordinator if it decides to take
9 possession of all or a portion of a sample (what remains of it after,
10 testing), in which case the requested sample or portion of such sample
11 shall be provided to EPA.

12 E. Settling Defendants recognize that, pursuant to CERCLA
13 Section 104(e)(7), 42 U.S.C. § 9604(e)(7), the data and reports
14 generated pursuant to this Consent Decree are not subject to the
15 protection of 18 U.S.C. § 1905 and 40 C.F.R. Part 2 as confidential
16 information. Moreover, the parties explicitly recognize that the
17 provisions of Section 104(e)(7)(F) of CERCLA apply to information,
18 generated by the Settling Defendants, with respect to hazardous
19 substances at the Site, except as protected by the attorney-client
20 privilege or the work-product doctrine. If the Settling Defendants
21 assert the attorney-client privilege or work-product doctrine with
22 respect to any document requested by EPA, they shall, upon request by
23 EPA, provide an identification of the title and subject matter of each

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1 document for which such an assertion is made, and an explanation of
2 why the doctrine and/or privilege is applicable to the document or
3 portions withheld.

4 F. All data, factual information, and documents submitted by the
5 Settling Defendants to EPA pursuant to this Consent Decree shall be
6 subject to public inspection, except as provided in CERCLA Section
7 104(e)(7), 42 U.S.C. § 9604(e)(7).

8 G. EPA's ability to obtain information pursuant to this Section
9 XIII is in addition to, and not in lieu of, its information gathering
10 abilities under applicable law.

11 XIV. FINANCIAL ASSURANCE

12 A. The Settling Defendants shall demonstrate their ability to
13 pay all costs associated with this Consent Decree--including Past and
14 Future Response Costs, the cost of completing the RD/RA, and the costs
15 that may be incurred under claims arising from the performance of the
16 RD/RA--by obtaining, and presenting to EPA, within thirty (30)
17 calendar days after the effective date of this Consent Decree, one of
18 the following items, for an amount of seven million dollars
19 (\$7,000,000.00): 1) a performance bond; 2) a letter of credit; 3) a
20 trust fund; or 4) a guarantee by a third party. In lieu of any of the
21 four items listed above, Settling Defendants may present internal
22 financial information sufficient to satisfy EPA that the Settling
23 Defendants have enough assets to make it unnecessary to require
24 additional financial assurances. If the Settling Defendants rely on
25 internal financial information for financial assurance, the Settling
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1 Defendants shall confirm and update such internal financial
2 information through an annual submittal of audited financial
3 statements, prepared in the normal course of business, until this
4 Consent Decree is deemed terminated pursuant to Section XXXV
5 (Termination and Satisfaction) of this Consent Decree.

6 B. At its discretion, EPA may evaluate the adequacy of the
7 financial assurance provided pursuant to this Section XIV and may
8 disapprove the financial assurance presented if, in EPA's
9 determination, it does not provide adequate assurance that Settling
10 Defendants are able to complete the RD/RA and to pay all Response
11 Costs related to the Site. If EPA determines the financial assurance
12 to be inadequate, the Settling Defendants shall obtain one of the four
13 other financial instruments listed above within thirty (30) calendar
14 days of such determination. If the Settling Defendants invoke the
15 dispute resolution provisions of this Consent Decree to resolve any
16 dispute over financial assurances, the Settling Defendants shall
17 obtain one of the four financial instruments listed above for the
18 amount specified in Paragraph A of this Section XIV, pending
19 resolution of the dispute.

20 XV. RETENTION OF RECORDS

21 A. Settling Defendants shall preserve and retain and shall
22 require anyone acting on their behalf to preserve and retain (in the
23 form of originals or exact copies, or in the alternative, microfiche
24 of all originals) all records and documents in their possession or
25 control or in the possession or control of their divisions, employees,
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1 agents, or accountants which are developed in the course of performing
2 the Remedial Work, regardless of any document retention policy to the
3 contrary, for six (6) years after the termination of this Consent
4 Decree. The requirement for preservation and retention of records and
5 documents shall not apply to drafts (other than those referred to by
6 name in the Scope of Work), and shall not apply to any phone message
7 slips, unless any such draft or phone message slip contains technical
8 data that is not otherwise being preserved under this Consent Decree.
9 Six (6) years following termination of this Consent Decree, or earlier
10 if requested by EPA, originals or copies of all such records and
11 documents shall be delivered to the EPA Project Coordinator or
12 designee, at which point Settling Defendants' document preservation
13 and retention obligations pursuant to this Consent Decree shall end,
14 except as provided in Paragraph B of this Section XV. At any time
15 during this six (6) year period, the Settling Defendants may also end
16 their preservation and retention obligations pursuant to this Consent
17 Decree (except as provided in Paragraph B of this Section XV) by
18 delivering to the EPA Project Coordinator, all at one time, originals
19 or copies of all such records or documents.

20 B. If the Settling Defendants assert the attorney-client
21 privilege or the work-product doctrine, with regard to any document
22 which would otherwise be submitted pursuant to this Section XV,
23 Settling Defendants shall (1) retain such document for the entire six
24 (6) year period following termination of this Consent Decree and (2)
25 if requested by EPA, provide an identification of the title and
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1 subject matter of each such document and an explanation of why the
2 doctrine and/or privilege is applicable to the document or portions
3 withheld.

4 XVI. REIMBURSEMENT OF FUTURE RESPONSE COSTS

5 A. Settling Defendants shall reimburse the Hazardous Substances
6 Superfund ("Superfund") for the following costs:

7 1. Any and all Future Response Costs, including oversight costs,
8 that the United States incurs or has incurred after October 31, 1988,
9 in connection with the Site, other than those costs that may arise
10 from EPA's performance of all or a part of the RD/RA.

11 2. Any and all Future Response Costs that the United States
12 incurs in a manner not inconsistent with the NCP, after October 31,
13 1988, in connection with the Site, for performance of all or a part of
14 the RD/RA in accordance with the procedures set forth in Paragraph A
15 or B of Section VIII (EPA Performance of the RD/RA) or in accordance
16 with the procedures outlined in the informal dispute resolution
17 portion of Section XX (Dispute Resolution).

18 B. After this Consent Decree becomes effective, EPA shall
19 provide to Settling Defendants, on the thirtieth (30) day of each
20 calendar month, copies of the Monthly Work Assignment Report showing
21 EPA contractor expenditures for the calendar month two months prior to
22 that date. Before providing such Monthly Work Assignment Report to
23 Settling Defendants, EPA may delete from the Monthly Work Assignment
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1 Report any information Settling Defendants would not be able to obtain
2 by filing a request for information under the Freedom of Information
3 Act, 5 U.S.C. § 552, et seq.

4 C. On February 1 of each year after this Decree becomes
5 effective, EPA shall submit to the Settling Defendants a statement and
6 accounting of all Future Response Costs incurred in the previous
7 fiscal year by the United States with respect to the Site. Each such
8 accounting shall be based on yearly final accounting documentation
9 from EPA Headquarters and the Department of Justice. Such
10 documentation shall be provided to Settling Defendants within fifteen
11 (15) federal working days of a request by Settling Defendants.
12 Settling Defendants shall, within sixty (60) calendar days of receipt
13 of the statement and accounting, remit a certified or cashiers check
14 made payable to the Hazardous Substances Superfund for the stated
15 amount of Future Response Costs and interest in accordance with
16 Paragraph E of this Section XVI. The checks shall contain the
17 Settling Defendants' complete and correct addresses, the Site name,
18 the Site spill identifier number (SSID # 0946), and the civil action
19 number and shall be addressed to:

20 U.S. Environmental Protection Agency
21 Superfund Accounting
22 P.O. Box 360863M
Pittsburgh, PA 15251
Attention: Collection Officer for Superfund

23 A copy of the transmittal letter and a copy of the check shall
24 be sent to the Chief of Environmental Enforcement at the address
25 indicated in Section XXII (Form of Notice) for the United States and a
26 copy of the transmittal letter and a copy of the check shall be sent

1 to the EPA Project Coordinator at the following address:

2 EPA Project Coordinator - MGM Brakes Site
3 Superfund Enforcement Branch
4 U.S. Environmental Protection Agency
5 215 Fremont Street
San Francisco, California 94105

6 D. For Future Response Costs which Settling Defendants have
7 agreed to pay pursuant to Paragraph A.2 of this Section XVI, Settling
8 Defendants may dispute any stated amount of such Future Response Costs
9 on the basis that such amount was not incurred by the United States in
10 connection with the Site in a manner not inconsistent with the NCP.
11 For Future Response Costs which Settling Defendants have agreed to pay
12 pursuant to Paragraph A.1 of this Section XVI, Settling Defendants
13 may dispute an amount stated for such Future Response Costs only on
14 the basis that the amount was not incurred by the United States in
15 connection with the Site. If Settling Defendants dispute any amount
16 stated in an EPA statement and accounting of Future Response Costs,
17 Settling Defendants shall notify EPA of their objections within sixty
18 (60) days of receipt of the statement and accounting, and any disputes
19 regarding such accounting of Future Response Costs shall be resolved
20 in accordance with Section XX (Dispute Resolution) of this Consent
21 Decree. Settling Defendants shall not be required to pay any amount
22 which is in dispute until final resolution of the dispute. Upon final
23 resolution of the dispute, Settling Defendants shall pay the amount,
24 if any, of the disputed Future Response Costs determined in the

1 dispute resolution proceeding to be payable, together with any
2 interest then due on such amount pursuant to paragraph E of this
3 Section XVI.

4 E. Interest at the rate specified in Section 107(a) of CERCLA,
5 42 U.S.C. § 9607(a), shall accrue on any unpaid Future Response Costs
6 beginning thirty (30) calendar days after Settling Defendants' receipt
7 of the EPA statement and accounting for such costs.

8 F. Payment made pursuant to this Section XVI shall not
9 constitute an admission by Settling Defendants of any liability to
10 Plaintiff or any other person. If EPA fails to issue a demand for
11 payment in a particular year, such failure shall not prevent EPA from
12 recovering those costs in a subsequent year. If EPA fails to provide
13 Settling Defendants with Monthly Work Assignment Reports pursuant to
14 Paragraph A of this Section XVI, such failure shall not affect EPA's
15 ability to recover Future Response Costs from Settling Defendants.

16 XVII. REIMBURSEMENT OF PAST COSTS

17 In full and complete settlement of Settling Defendants' liability
18 to the United States for all Past Response Costs incurred by the
19 United States with respect to the Site, Settling Defendants shall
20 reimburse the Superfund in the amount of eight hundred and twenty
21 three thousand, one hundred and nineteen dollars and fifty-five cents
22 (\$823,119.55). Settling Defendants shall, within sixty (60) calendar
23 days of the effective date of this Consent Decree, remit a certified
24 or cashiers check for such amount to the address listed in Section XVI
25 (Reimbursement of Future Response Costs) for Superfund Accounting,
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1 along with a transmittal letter containing the Settling Defendants'
2 complete and correct addresses, the Site name, the Site spill
3 identifier number (SSID 0946), and the civil action number. Settling
4 Defendants shall send a copy of the transmittal letter and a copy of
5 the check to the Chief of the Environmental Enforcement Section at the
6 address indicated in Section XXII (Form of Notice) for the United
7 States and Settling Defendants shall send a copy of the transmittal
8 letter and a copy of the check to the EPA Project Coordinator at the
9 address listed in Section XVI (Reimbursement of Future Response Costs)
10 for that purpose. If Settling Defendants do not reimburse the
11 Superfund in the amount specified in this Section XVII within sixty
12 (60) calendar days of the effective date of this Consent Decree, then
13 interest on the unpaid amount shall run from thirty (30) days after
14 the effective date of this Consent Decree, at the rate specified in
15 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

16 XVIII. RESERVATION AND WAIVER OF RIGHTS

17 A. Except as provided in Section XXV (Covenant Not to Sue)
18 below, the United States reserves the right to take any enforcement
19 action pursuant to CERCLA and/or any other legal authority, including
20 but not limited to the right to seek Past and Future Response Costs,
21 injunctive relief, monetary penalties, and punitive damages for any
22 civil or criminal violation of law or of this Consent Decree.

23 B. Settling Defendants waive the provisions of Section 106(b)(2)
24 of CERCLA, 42 U.S.C. § 9606(b)(2).
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1 C. The United States expressly reserves all rights and defenses
2 that it may have, including both the right to disapprove of work
3 performed by Settling Defendants which does not comply with this
4 Consent Decree; and to request Settling Defendants to perform response
5 work at the Site in addition to that detailed in the Scope of Work,
6 provided that: 1) any such additional response work is required to
7 implement the remedy selected in the ROD; or (2) the conditions of
8 Paragraph C of Section XXV (Covenant Not to Sue) of this Consent
9 Decree are met.

10 D. The United States expressly reserves its rights to perform
11 any and all response actions at the Site, including all or any part of
12 the RD/RA, as EPA determines necessary. The United States reserves
13 such rights notwithstanding the provisions of Section XXV (Covenant
14 Not to Sue) and the provisions of Section XX (Dispute Resolution), and
15 any invocation of judicial dispute resolution procedures by Settling
16 Defendants pursuant to Section XX (Dispute Resolution) shall not
17 affect this reservation of rights.

18 E. Except as provided in Section XXV (Covenant Not to Sue),
19 nothing in this Consent Decree shall be deemed to limit the response
20 authority of EPA under Section 106 of CERCLA, 42 U.S.C. § 9606, or
21 under any other Federal authority.

22 F. Nothing in this Consent Decree shall be deemed to limit the
23 United States' authority pursuant to Section 104 of CERCLA, 42 U.S.C.
24 § 9604.

1 G. By entering into and performing this Consent Decree, Settling
2 Defendants do not admit liability for any response costs which may
3 have been incurred by any person other than the United States.

4 H. Except as provided in Section XXV (Covenant Not to Sue),
5 compliance with the terms of this Consent Decree, including the
6 completion of the Scope of Work, does not constitute a release of
7 Settling Defendants by Plaintiff from any liability.

8 XIX. STIPULATED PENALTIES

9 A. General Provisions

10 1. If Settling Defendants fail to comply with the requirements
11 of this Consent Decree, Settling Defendants shall pay stipulated
12 penalties to the United States in the amounts set forth in Paragraph B
13 of this Section XIX.

14 2. Failure to comply with this Consent Decree shall include but
15 is not limited to the following:

16 (a) Failure to submit deliverables specified in the Scope of
17 Work in an acceptable manner and within the specified time schedules;
18 provided, however, that failure to submit draft deliverables in an
19 acceptable manner, if the draft deliverables are submitted in a timely
20 manner, shall not constitute a failure to comply with the terms of
21 this Consent Decree. If EPA disapproves of a deliverable required by
22 the Scope of Work to be submitted by or on behalf of Settling
23 Defendants, EPA must state in writing to Settling Defendants the basis
24 for EPA's disapproval.

1 (b). Failure to comply with the applicable EPA-approved plans,
2 plans and specifications, or schedules required by this Consent
3 Decree, or failure diligently to seek to obtain any necessary permits
4 for off-Site work or access agreements for work to be conducted off of
5 the Property as required by this Consent Decree.

6 (c). Failure to comply with any permit obtained by Settling
7 Defendants for the purpose of implementing the requirements of this
8 Consent Decree in any location off of the Site; provided, however,
9 that the amount of any stipulated penalties owed by Settling
10 Defendants for failure to comply with any such permit shall be reduced
11 by any amount collected by the State or any Federal agency, other than
12 EPA pursuant to this Consent Decree, for the same failure to comply.

13 3. Stipulated penalties shall begin to accrue on the day after
14 complete performance is due or a violation otherwise occurs, and shall
15 continue to accrue up to and including the day on which the
16 noncompliance is corrected.

17 4. Nothing herein shall prevent the simultaneous accrual of
18 separate penalties for separate and distinct violations of this
19 Consent Decree. However, duplicate penalties shall not be assessed for
20 failure to submit a deliverable in an acceptable or timely manner, or
21 for any other single act or omission that could be construed to
22 violate more than one provision of this Consent Decree; provided,
23 however, that if any such single act or omission results in a delay
24 during which Settling Defendants also fail to comply with other
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1 requirements of this Consent Decree, stipulated penalties shall accrue
2 for each such failure to comply, except as provided in Paragraph C.5
3 of Section XX (Dispute Resolution).

4 5. EPA, in its sole discretion, may waive stipulated penalties
5 for a violation of this Consent Decree. If EPA does not waive
6 stipulated penalties, EPA shall provide Settling Defendants with
7 written notice of the alleged deficiency in Settling Defendants'
8 compliance with this Consent Decree. In the notice of deficiency, EPA
9 shall describe the alleged deficiency and state the amount of
10 stipulated penalties then due; provided, however, that if EPA provides
11 Settling Defendants with notice of an alleged deficiency, and that
12 deficiency continues, EPA shall not be required to provide any
13 additional notice of the deficiency in order for stipulated penalties
14 to become payable with respect to the continuing violation. For any
15 such continuing violation, payment for each day of noncompliance
16 beyond the date(s) stated in EPA's notice of deficiency shall be
17 payable thirty (30) calendar days after each such day of continued
18 violation. If EPA also seeks to perform all or part of the RD/RA
19 pursuant to an allegation that Settling Defendants have failed to meet
20 the requirements of this Consent Decree, EPA's notice of deficiency
21 shall satisfy the requirements of Paragraph A.1 of Section VIII (EPA
22 Performance of the RD/RA) of this Consent Decree.

23 6. All stipulated penalties owed to the United States under this
24 Section XIX shall be payable within thirty (30) calendar days of the
25 date Settling Defendants receive the notice of deficiency described in
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1 Paragraph A.5 of this Section (with the exception that stipulated
2 penalties for deficiencies of a continuing nature shall be payable as
3 provided in Paragraph A.5 of this Section XIX), unless Settling
4 Defendants invoke the dispute resolution procedures of Section XX
5 (Dispute Resolution) of this Consent Decree. Interest shall begin to
6 accrue on any unpaid balance thirty (30) calendar days after Settling
7 Defendants receive the notice of deficiency described in Paragraph A.5
8 of this Section, with the exception that interest shall begin to
9 accrue on any unpaid amount due for continuing violations the day such
10 amounts become payable, in accordance with Paragraph A.5 of this
11 Section XIX. If Settling Defendants invoke the dispute resolution
12 procedures of Section XX (Dispute Resolution) of this Consent Decree,
13 stipulated penalties shall be payable in accordance with the terms of
14 Paragraph A.7 of this Section XIX. Interest shall be at the rate
15 specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Stipulated
16 penalties shall be paid by certified or cashiers check made payable to
17 the Hazardous Substances Fund. Any such check shall contain Settling
18 Defendants' complete and correct addresses, the Site name, the Site
19 spill identifier number (SSID # 0946), and the civil action number.
20 All checks should be addressed as indicated in Section XVI
21 (Reimbursement of Future Response Costs) for submittals to Superfund
22 Accounting. Settling Defendants shall include with any such check a
23 cover letter referring to the EPA notice of deficiency. A copy of any
24 check in payment of stipulated penalties, and a copy of the letter
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1 forwarding such check, shall be submitted to EPA and the United States
2 in accordance with Section XXII (Form of Notice) of this Consent
3 Decree.

4 7. Settling Defendants may dispute a notice of deficiency issued
5 pursuant to Paragraph A.5 of this Section XIX by invoking the dispute
6 resolution procedures of Section XX (Dispute Resolution) of this
7 Consent Decree. Stipulated penalties for a matter in dispute (and
8 interest thereon) shall accrue, but need not be paid, during the
9 dispute resolution period; however, Settling Defendants shall pay any
10 stipulated penalties for matters not in dispute within the time
11 provided in Paragraph A.6 of this Section XIX. If Settling Defendants
12 prevail upon resolution of the dispute, no stipulated penalties are
13 payable. If Settling Defendants do not prevail upon resolution of the
14 dispute, EPA may, in its sole discretion, either collect or waive the
15 stipulated penalties and interest which accrued prior to and during
16 the dispute resolution period.

17 8. If Settling Defendants fail to pay stipulated penalties in
18 accordance with this Section, Plaintiffs may institute proceedings to
19 collect the penalties. The introduction into evidence of this Consent
20 Decree in such proceedings shall not be barred by Paragraph O of
21 Section VI (Site Background) of this Consent Decree.

22 9. Notwithstanding the stipulated penalties provisions of this
23 Section XIX, EPA may elect to assess civil penalties or bring an
24 action in District Court to enforce the provisions of this Consent
25 Decree. Payment of stipulated penalties shall not preclude EPA from
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1 electing to pursue any other remedy or sanction it may have to enforce
2 this Consent Decree, and nothing shall preclude EPA from seeking
3 statutory penalties against the Settling Defendants for violations of
4 statutory or regulatory requirements, except that the total penalties
5 (including stipulated penalties) collected by EPA for any one
6 violation shall not exceed \$25,000 per day per violation.

7 10. In the event EPA assumes the performance of all or a portion
8 of the RD/RA pursuant to Section VIII (EPA Performance of the RD/RA)
9 of this Consent Decree, the Settling Defendants shall not be liable
10 for stipulated penalties pursuant to this Section XIX after the date
11 EPA provides notice to Settling Defendants pursuant to Paragraph A.3
12 of Section VIII (EPA Performance of the RD/RA), with respect to that
13 portion of the RD/RA which EPA notifies Settling Defendants it intends
14 to perform. If the United States provides notice of its intent to
15 perform all or any part of the RD/RA because the Settling Defendants
16 have failed to comply with this Consent Decree, Settling Defendants
17 shall pay stipulated penalties from the day after performance is due
18 or the noncompliance occurs up to and including the date that Settling
19 Defendants correct the violation or EPA gives notice of its intent to
20 perform the RD/RA, whichever occurs first.

21 11. If EPA assumes the performance of all or a portion of the
22 RD/RA pursuant to Section VIII (EPA Performance of the RD/RA),
23 Settling Defendants shall pay a Work Assumption Penalty. If EPA
24 assumes a portion of that part of the RD/RA not already performed by
25 Settling Defendants, the amount of such Work Assumption Penalty shall
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1 be \$100,000.00. If EPA assumes the performance of all of the RD/RA
2 not already performed by Settling Defendants, the amount of such Work
3 Assumption Penalty shall be \$500,000.00. Such Work Assumption Penalty
4 shall be payable within thirty (30) days of Settling Defendants'
5 receipt of EPA's notice of intent to assume performance of all or a
6 part of the RD/RA in accordance with Paragraph A.3 of Section VIII
7 (EPA Performance of the RD/RA). Interest at the rate specified in
8 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), shall begin to accrue
9 on any unpaid amount thirty (30) calendar days after Settling
10 Defendants' receipt of such notice. If Settling Defendants invoke
11 dispute resolution, Settling Defendants shall pay the Work Assumption
12 Penalty, plus accrued interest, within thirty days after final
13 resolution of the dispute; provided, however, that Settling Defendants
14 shall pay no Work Assumption Penalty or interest thereon if it is
15 determined in the dispute resolution proceeding that EPA did not
16 assume performance of all or a part of the RD/RA in accordance with
17 the terms and conditions of Paragraph A of Section VIII (EPA
18 Performance of the RD/RA). Any Work Assumption Penalty paid pursuant
19 to this subparagraph 11 shall be in addition to, and not in lieu of,
20 Settling Defendants obligation to pay Future Response Costs as set
21 forth in Paragraph A of Section XVI (Reimbursement of Future Response
22 Costs).

23 12. No stipulated penalties, Work Assumption Penalty, or
24 interest paid on any such penalty or penalties pursuant to this
25 Section shall be tax deductible. No part of the Total Response Costs
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1 shall constitute a penalty of any kind, and no penalties have been
2 assessed by EPA against Settling Defendants with respect to the Site
3 as of the date this Consent Decree is signed.

4 B. Specific Stipulated Penalty Amounts

5 1. Stipulated penalties shall accrue in the following amounts
6 and Settling Defendants may not dispute the amounts set forth below
7 for each class of violations:

8 Class I

9 a.) Submittal of the following:

- 10 1. Draft RD Quality Assurance Project Plan
- 11 2. Draft and Final RD and RA Health and Safety Plan
- 12 3. Draft RA Quality Assurance Project Plan
- 13 4. Draft Technical Memorandum No. 1
- 14 5. Draft Technical Memorandum No. 2
- 15 6. Preliminary RD Plans and Specifications
- 16 7. Monitoring Plans
- 17 8. Draft and Final Prefinal Inspection Reports
- 18 9. Monthly Progress Reports

19 Penalties:

20 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
21 Days 1 - 5	\$500
22 Days 6 - 30	\$2,000
23 After 30 Days	\$10,000

1 Class II

2 a.) Submittal of the following:

- 3 1. Draft Remedial Design Work Plan
- 4 2. Draft and Final Additional Studies Sampling Plan for Soils
- 5 and Concrete
- 6 3. Final RD Quality Assurance Project Plan
- 7 4. Final RA Quality Assurance Project Plan
- 8 5. Final Technical Memorandum No. 1
- 9 6. Draft and Final Additional Studies Sampling Plan for
- 10 Groundwater
- 11 7. Final Technical Memorandum No. 2
- 12 8. Draft Technical Memorandum No. 3
- 13 9. Draft RD Plans and Specifications
- 14 10. Final Monitoring Plans

15 b.) All other failures to comply in a timely and adequate manner with
16 the terms of this Consent Decree, including all ARARS identified in
17 the ROD or in this Consent Decree and all requirements in the Scope of
18 Work or in approved Work Plans, that are not Class I or Class III
19 violations.

20 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
21 Days 1 - 5	\$2,000
22 Days 6 - 30	\$5,000
23 After 30 Days	\$12,000

1 Class III

2 a.) Submittal of the following:

- 3 1. Final Remedial Design Work Plan
4 2. Final Technical Memorandum No. 3
5 3. Final RD Plans and Specifications
6 4. Final Remedial Action Work Plan
7 5. Final Remedy Certification Reports

8 b.) Violation of the following:

- 9 1. Applicable or Relevant and Appropriate effluent limitations,
10 pretreatment standards, water quality standards, or other
11 discharge requirements for PCBs and/or VOCs
12 2. The North Coast Regional Basin Plan Water Quality Objectives
13 Related to Toxicity
14 3. The North Coast Regional Basin Plan Requirements Related to
15 Water Discharge Prohibitions
16 4. Manifest requirements
17 5. QAPPs
18 6. Sampling plan(s)
19 7. Air monitoring requirements of the Monitoring Plan
20 8. PCB verification requirements of the Monitoring Plan
21 9. Requirements of Section XII (Financial Assurance)

22	<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
23	Days 1 - 7	\$5,000
24	Days 8 - 30	\$10,000
25	Days 31 - 60	\$15,000

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After 60 Days

\$20,000

XX. DISPUTE RESOLUTION

A. Introduction

As required by Section 121(e)(2) of CERCLA, 42 U.S.C. § 9621(e)(2), the Parties to this Consent Decree shall in good faith attempt to resolve expeditiously and informally disagreements concerning implementation of this Consent Decree or work required by it. If a dispute arises with respect to the meaning or application of this Consent Decree, it shall in the first instance be the subject of informal negotiations between EPA and the Settling Defendants, pursuant to Paragraph B of this Section XX. In the event that the Parties cannot resolve a dispute arising under this Consent Decree, then the interpretation advanced by EPA shall be considered binding unless the Settling Defendants file a Motion for Judicial Dispute Resolution pursuant to Paragraph C of this Section XX. Settling Defendants may file such a motion only after the EPA has issued its written statement of decision pursuant to Paragraph B of this Section XX or EPA has failed to issue a statement of decision within seven (7) calendar days after the end of the Informal Period as hereinafter defined. Settling Defendants' decision to invoke the dispute resolution process shall not constitute a force majeure under Section XXI (Force Majeure and Other Delays) of this Consent Decree; nor shall the filing of a petition to resolve any dispute nor the payment of penalties alter in any way Settling Defendants' obligation to complete the performance required hereunder. Nothing in this Section XX shall

1 be construed to limit EPA's ability to perform response actions at the
2 Site pursuant to Section XVIII (Reservation and Waiver of Rights) of
3 this Consent Decree.

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5 B. Informal Dispute Resolution

6 1. If the Settling Defendants raise an objection to any EPA
7 conditional approval or notice of disapproval issued pursuant to the
8 provisions of the Scope of Work; any EPA notice of deficiency issued
9 pursuant to Paragraph A of Section VIII (EPA Performance of the RD/RA)
10 or Paragraph A.5 of Section XIX (Stipulated Penalties) of this Consent
11 Decree; or any other decision made by EPA pursuant to this Consent
12 Decree, or if EPA and the Settling Defendants otherwise reach an
13 impasse with regard to the requirements of this Consent Decree, the
14 Settling Defendants shall notify EPA immediately in writing of the
15 matters in dispute, which notice shall include a detailed description
16 of the basis for Settling Defendants' position regarding the matters
17 in dispute.

18 2. EPA and the Settling Defendants shall have a time period (the
19 "Informal Period") within which to reach agreement with regard to the
20 matters in dispute. The Informal Period shall consist of fourteen
21 (14) federal working days (or such longer or shorter time period as
22 the Parties may agree) from the receipt by EPA of Settling Defendants'
23 notice pursuant to Paragraph B.1 of this Section XX. During the
24 Informal Period, the Parties shall attempt to resolve the dispute by
25 informal telephone conferences or through informal meetings arranged
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1 by either Party. Within seven (7) calendar days after the end of the
2 Informal Period, EPA shall issue a written statement of its decision
3 to the Settling Defendants.

4 3. In its written statement of decision, EPA shall provide the
5 Settling Defendants with an adequate time period to implement the
6 directives contained in the decision. The time period provided shall
7 constitute a Cure Period during which EPA shall not take over
8 performance of the RD/RA pursuant to Section VIII unless necessary to
9 avoid an immediate and significant threat to the environment. The
10 statement of decision shall not contain a Cure Period as provided in
11 this paragraph if EPA has issued a Notice of Deficiency pursuant to
12 Section VIII (EPA Performance of the RD/RA) with respect to the
13 matters in dispute, and Settling Defendants have notified EPA of their
14 intent to attempt to cure the deficiency during the Cure Period
15 provided in the Notice of Deficiency.

16 4. Settling Defendants shall implement the directives contained
17 in the statement of decision within the Cure Period, and/or Settling
18 Defendants may elect to pursue Judicial Dispute Resolution pursuant to
19 Paragraph C of this Section XX. If Settling Defendants fail to
20 implement the directives within the Cure Period, EPA may elect to
21 perform all or a part of the RD/RA pursuant to Section VIII (EPA
22 Performance of the RD/RA) of this Consent Decree. If EPA elects to
23 perform all or a part of the RD/RA based on Settling Defendants'

1 failure to implement the directives within the Cure Period, EPA shall
2 provide Settling Defendants with notice of its intent to perform all
3 or a portion of the RD/RA.

4 5. During a Cure Period following informal dispute resolution,
5 stipulated penalties shall accrue pursuant to Section XIX (Stipulated
6 Penalties) for all violations of this Consent Decree by Settling
7 Defendants, including those pertaining to matters in dispute.

8 C. Judicial Dispute Resolution

9 1. Except as to those matters covered in Section IV (Findings),
10 in the event that a dispute between the Settling Defendants and EPA
11 develops which cannot be resolved by the informal negotiation
12 procedures outlined in Paragraph B of this Section XX, and should
13 Settling Defendants choose not to accept EPA's statement of decision
14 following the Informal Period as a final statement of Settling
15 Defendants obligations under this Consent Decree, Settling Defendants
16 may, within sixty (60) days of receipt of EPA's statement of decision,
17 file with the Court a Motion for Dispute Resolution which shall
18 contain a written statement of the matters in dispute, a recitation of
19 the relevant facts and the evidence upon which the dispute is based,
20 and a proposal for the dispute's resolution. Settling Defendants may
21 not file such a Motion for Dispute Resolution until seven (7) days
22 after the end of the Informal Period. EPA shall have thirty (30) days
23 to file an Opposition to Settling Defendants Motion for Dispute
24 Resolution. Settling Defendants shall have fourteen (14) calendar
25 days to file a Reply. Settling Defendants' decision to invoke
26

1 Judicial Dispute Resolution shall not limit in any way the United
2 States' right to perform the RD/RA pursuant to Section VIII (EPA
3 Performance of the RD/RA) or to perform response actions at the Site
4 pursuant to Section XVIII (Reservation and Waiver of Rights).

5 2. In any judicial dispute resolution proceeding involving
6 matters covered by CERCLA Section 113(j)(2), 42 U.S.C. § 9613(j)(2),
7 the Court shall apply the standards and provisions of that statutory
8 subsection. In any dispute relating to the technique, cost,
9 effectiveness or adequacy of any aspect of the Remedial Action or
10 Remedial Work, the Court shall apply an arbitrary and capricious
11 standard of review. In any other dispute, and except as specified in
12 Section XXI (Force Majeure and Other Delays), the Court shall
13 determine the appropriate standard of judicial review, based on
14 general principles of administrative law. In any dispute, the
15 Settling Defendants shall bear the burden of coming forward with
16 evidence and of persuasion on factual issues.

17 3. If EPA prevails in a judicial dispute resolution proceeding,
18 then Settling Defendants shall transmit payment of all stipulated
19 penalties which have accrued during the dispute, plus interest at the
20 rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to
21 the Hazardous Substances Superfund, within thirty (30) calendar days
22 of the Court order or decision containing such finding. If Settling
23 Defendants prevail in part and do not prevail in part, they shall
24 transmit payment of stipulated penalties stemming from that portion of
25 the dispute on which they did not prevail, plus interest in accordance
26

1 with Paragraph A.6 of Section XIX (Stipulated Penalties), within
2 thirty (30) calendar days of the Court order or decision containing
3 such finding. Settling Defendants shall also perform any Remedial
4 Work which was the subject of the dispute unless EPA has already
5 performed such work or given Settling Defendants notice of its intent
6 to perform such work.

7 4. If the Settling Defendants prevail, they shall not owe
8 stipulated penalties in connection with the dispute and the Court or
9 EPA shall extend the compliance schedule to allow such additional time
10 as may be necessary to complete activities delayed by the dispute and
11 any succeeding phases of work affected by the dispute (including and
12 allowing for time necessary to remobilize resources and resume work).

13 5. Stipulated penalties shall not be excused for failure to
14 perform Remedial Work which was not in dispute, except to the extent
15 that Settling Defendants can show that it was impossible to perform
16 such work pending resolution of the matters in dispute and Settling
17 Defendants otherwise prevail in the dispute regarding the matters that
18 had to be resolved before such work could be performed.

19 D. Administrative Record

20 1. Upon Settling Defendants filing of a Motion for Judicial
21 Dispute Resolution, EPA shall prepare an administrative record of
22 EPA's decision on the disputed matter(s). Settling Defendants shall
23 be responsible for submitting to EPA during the Informal Period for
24 inclusion in the administrative record all information Settling
25 Defendants want EPA to consider before making a decision.
26

1 2. The custodian of the administrative record prepared pursuant
2 to subparagraph (1) shall certify and submit the record to the Court
3 upon EPA's filing of its Opposition to Settling Defendants Motion for
4 Dispute Resolution. The Court's review is limited to the
5 Administrative Record.

6 E. Force Majeure and Stipulated Penalties

7 1. Settling Defendants' decision to invoke the dispute
8 resolution process shall not constitute a force majeure under Section
9 XXI (Force Majeure and Other Delays) of this Consent Decree, and shall
10 not extend or postpone the Settling Defendants' obligation under this
11 Consent Decree or stay the accrual of stipulated penalties pursuant to
12 Section XIX (Stipulated Penalties) of this Consent Decree. However,
13 EPA shall not demand payment of penalties accrued for disputed matters
14 until completion of the Judicial Dispute Resolution process.

15 XXI. FORCE MAJEURE AND OTHER DELAYS

16 A. The parties agree that time is of the essence in this Consent
17 Decree. Settling Defendants shall perform all the requirements of
18 this Consent Decree according the the schedules contained herein or
19 established hereunder or any approved modifications thereto, unless
20 their performance is prevented or delayed by events which constitute
21 force majeure.

22 B. For purposes of this Consent Decree, "force majeure" is
23 defined as any event that delays or prevents the timely performance of
24 any obligation under this Consent Decree, which arises from causes
25 beyond the control of the Settling Defendants, or their Contractor(s),
26

1 and which could not have been prevented or overcome by taking
2 practicable measures available to Settling Defendants. The Settling
3 Defendants shall have the burden of proving by a preponderance of the
4 evidence that any delay was or will be caused by a force majeure
5 event, that the duration of the delay is or was warranted under the
6 circumstances, and that the Settling Defendants complied with the
7 notice requirements of Paragraph C of this Section XXI. Force majeure
8 shall neither include normal inclement weather, increased costs or
9 expenses of any work to be performed under this Consent Decree,
10 financial hardship to the Settling Defendants in performing the work
11 required by this Consent Decree, nor the failure of the Settling
12 Defendants or Settling Defendants' representative(s) to make complete
13 and timely application for any required approval or permit.

14 C. When an event occurs that may delay or prevent the timely
15 performance of any obligation under this Consent Decree, the
16 completion of any required Remedial Work, or access to any property on
17 which any part of the Remedial Work is to be performed, the Settling
18 Defendants shall immediately (no later than two (2) working days after
19 Settling Defendants become aware of the possible delay) orally notify
20 EPA's Project Coordinator, or in his or her absence, the Director of
21 the Toxics and Waste Management Division, EPA Region IX. Oral
22 notification shall be deemed to have been given if, in the absence of
23 telephone contact, and within two (2) working days after Settling
24 Defendants become aware of the possible delay, Settling Defendants
25 provide written notice to EPA. Within five (5) working days of oral
26

1 (or written) notification to EPA, Settling Defendants shall notify EPA
2 in writing of: (1) the alleged or potential delay and whether or not
3 the Settling Defendants contend that it was caused by a force majeure
4 event under this Section; (2) the anticipated length and cause of the
5 delay; (3) the tasks affected by the delay; (4) the measures taken
6 and/or to be taken to prevent or minimize the delay; and (5) the
7 timetable by which the Settling Defendants intend to implement these
8 measures. Settling Defendants may supplement this submittal during
9 informal dispute resolution. Failure to comply with the notification
10 requirements of this Paragraph shall constitute a waiver by the
11 Settling Defendants of any claim of force majeure.

12 D. If EPA determines that the delay or anticipated delay has
13 been or will be caused by a force majeure event, the time for
14 performance hereunder shall be extended to allow such additional time
15 as EPA finds may be necessary to allow completion of the delayed
16 activity and any succeeding phase of the Remedial Work affected by the
17 delay, with such additional time not to be less than the actual
18 duration of the delay (including and allowing for time necessary to
19 remobilize resources and resume work). After an extension has been
20 granted for a force majeure event, Settling Defendants shall make an
21 independent showing that any subsequent delay is attributable to the
22 force majeure event. Settling Defendants shall adopt all practicable
23 measures to avoid or minimize any delay, including those caused by
24 force majeure events. Any delay in performance of an obligation under
25 this Consent Decree which is determined to be the result of a force
26

1 majeure event shall not be deemed to be a violation of any obligation
2 of the Settling Defendants under this Consent Decree and shall not
3 make the Settling Defendants liable for stipulated penalties under
4 Section XIX (Stipulated Penalties) of this Consent Decree.

5 E. Delays in timely performance of the obligations of Settling
6 Defendants under this Consent Decree not caused by a force majeure
7 event shall constitute a failure to comply with this Consent Decree,
8 which is subject to stipulated penalties pursuant to Section XIX
9 (Stipulated Penalties) of this Consent Decree.

10 F. If the United States and the Settling Defendants cannot agree
11 as to whether the reason for the delay was a force majeure event, the
12 determination of the United States shall control. If the Settling
13 Defendants dispute this determination, the dispute shall be resolved
14 by the procedures outlined in Section XX (Dispute Resolution) of this
15 Consent Decree.

16 XXII. FORM OF NOTICE

17 A. Except insofar as oral notification is specifically provided
18 for in this Consent Decree, when notification or a submittal to the
19 United States, EPA, or the Settling Defendants is required by the
20 terms of this Consent Decree, it shall be sent in writing, postage
21 prepaid, and addressed as follows:

22 As to the United States:

23 Chief
24 Environmental Enforcement Section
25 Land and Natural Resources Division
26 Department of Justice
Ben Franklin Station, P.O. Box 7611
Washington, D.C. 20040

1 As to EPA:

2 EPA Project Coordinator - MGM Brakes Site
3 Superfund Enforcement Branch
4 U.S. Environmental Protection Agency
5 215 Fremont Street
6 San Francisco, Ca 94105

7 AND

8 Office of Regional Counsel
9 U.S. Environmental Protection Agency
10 215 Fremont Street
11 San Francisco, CA 94105

12 As to the Settling Defendants:

13 Theodore G. Erler, III
14 Erler & Kalinowski, Inc.
15 1730 S. Amphlett Blvd., Suite 320
16 San Mateo, California 94402
17 (415) 578-1172

18 AND

19 Patricia L. Shanks, Esq.
20 McCutchen, Doyle, Brown & Enerson
21 Three Embarcadero Center
22 San Francisco, CA 94111
23 (415) 393-2529

24 In case of written notice or submittals, notice shall be deemed
25 given on the date the notification or submittal is received by the
26 party to whom notice must be given pursuant to this Consent Decree.

27 B. As a courtesy, EPA also agrees to attempt to send to Mr.
28 Frank Vecchio, at the below-stated address, copies of all
29 notifications or submittals that EPA is required to send to the
30 Settling Defendants pursuant to this Consent Decree; provided,
31 however, that failure to send a copy of any such notification or
32 submittal to Mr. Vecchio shall not be deemed a violation of this
33 Consent Decree.

1 Frank B. Vecchio, Esquire
2 Butzel, Long, Gust, Klein, & Van Zile
3 1650 First National Building
4 Detroit, Michigan 48226

5 XXIII. MODIFICATION

6 Except as provided for herein, there shall be no modification of
7 this Consent Decree without written approval of all parties to this
8 Decree and entry by the Court; provided, however, that the Parties may
9 agree to, and Court approval shall not be required for, modifications
10 of the Scope of Work that are consistent with the ROD and made
11 pursuant to Paragraph A.1 of Section VII (Work to be Performed).

12 XXIV. ADMISSIBILITY OF DATA

13 In the event that the Court is called upon to resolve a dispute
14 concerning implementation of this Consent Decree, the Parties waive
15 any evidentiary objection to the admissibility into evidence of data
16 gathered, generated, or evaluated pursuant to this Decree.

17 XXV. COVENANT NOT TO SUE

18 A. Except as specifically provided in Paragraphs B and C of this
19 Section XXV, the United States covenants not to sue the Settling
20 Defendants for Covered Matters. Covered Matters shall consist of any
21 and all civil liability to the United States for causes of action
22 arising under Sections 106 and 107(a) of CERCLA and Section 7003 of
23 the Resource, Conservation and Recovery Act ("RCRA") relating to the
24 Site. Except as provided in Paragraph E of this Section XXV, with
25 respect to Future Liability, this covenant not to sue shall take
26 effect upon issuance by EPA of both Certificates of Completion

1 provided for in Section XXIX (Completion of the Remedial Action).
2 This covenant not to sue is not, and shall not be construed as, a
3 covenant not to sue any Settling Defendant that does not fulfill its
4 obligations under this Consent Decree.

5 B. Settling Defendants are expressly not released from, and the
6 provisions of Subsection A of this Section shall not apply to, any
7 matter not expressly addressed by this Consent Decree, including the
8 following claims:

9 1. Claims based on a failure by the Settling Defendants to
10 meet the requirements of this Consent Decree;

11 2. Any other claims of the United States for any other
12 costs or actions necessary at the Site which are not Covered Matters;

13 3. Claims based on the Settling Defendants' liability
14 arising from the past, present or future disposal of hazardous
15 substances outside of the Site, other than claims specifically
16 released pursuant to Paragraph E of this Section XXV;

17 4. Any claim or demand for damage to Federal property at
18 any locations where the Remedial Action is being performed;

19 5. Claims based on criminal liability;

20 6. Claims based on liability for damage to natural
21 resources as defined in CERCLA;

22 7. Claims based on liability for hazardous substances
23 removed from the Site, other than those claims specifically released
24 pursuant to Paragraph E of this Section XXV;

1 8. Claims based on liability for expenses incurred in
2 connection with any five (5) year review pursuant to CERCLA Section
3 121(c);

4 9. Liability for any violations of Federal, State or local
5 law which occur during implementation of the Remedial Work.

6 10. Claims for Future Response Costs (and interest thereon)
7 that become due and payable pursuant to Section XV (Reimbursement of
8 Future Response Costs) of this Consent Decree, but which Settling
9 Defendants do not pay by the date any such amounts are payable.

10 C. In addition to the explicit reservation of rights contained
11 in Section XVIII (Reservation and Waiver of Rights) and,
12 notwithstanding any provision of this Consent Decree other than
13 Paragraph E of this Section XXV, the United States reserves the right
14 to institute proceedings in this action or in a new action or to issue
15 an Order: (1) seeking to compel the Settling Defendants to perform any
16 additional response work in connection with the Site and/or (2)
17 seeking reimbursement for response costs incurred by the United States
18 and to reimburse the State for its matching share of any response
19 action undertaken under CERCLA, relating to the Site if:

20 (1) for proceedings prior to EPA's issuance of both Certificates
21 of Completion referred to in Section XXIX (Completion of the
22 Remedial Action) of this Consent Decree,

23 i. conditions at the Site, previously unknown
24 to the United States, are discovered after the entry of this
25 Consent Decree, or
26

1 ii. information is received, in whole or in part, after
2 entry of this Consent Decree,
3 and these previously unknown conditions or this information
4 indicates that the Remedial Action is not protective of human
5 health and the environment;

6 (2) for proceeding subsequent to EPA's issuance of both
7 Certificates of Completion referred to in Section XXIX
8 (Completion of the Remedial Action) of this Consent Decree,

9 i. conditions at the Site, previously unknown to the United
10 States, are discovered after issuance of both Certificates
11 of Completion by EPA, or

12 ii. information is received, in whole or in part, after
13 issuance of both Certificates of Completion by EPA,
14 and these previously unknown conditions or this information
15 indicates that the Remedial Action is not protective of human
16 health and the environment.

17 D. Subject to the provisions of Paragraphs A and B of this
18 Section XXV, the United States' right to institute proceedings
19 pursuant to CERCLA Sections 106 and 107 and RCRA Section 7003 in this
20 action or in a new action seeking to compel Settling Defendants to
21 perform additional response work at the Site or seeking reimbursement
22 of the United States for response costs at the Site, may only be
23 exercised where the conditions in Paragraph C of this Section are met.
24 Nothing in this Section shall be construed to limit the United States'
25 authority to perform response work at the Site.

1 E. With respect to the portion of the Remedial Work which
2 involves the transport and secure disposition off of the Site of
3 hazardous substances in a facility meeting the requirements of RCRA
4 Sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and Section
5 3005(c), the United States covenants not to sue Settling Defendants,
6 jointly or severally, with respect to Future Liability to the United
7 States under Chapter 103 of the United States Code Title 42 for a
8 future release or threatened release of hazardous substances from such
9 facility and Settling Defendants shall not be liable to the United
10 States under CERCLA Sections 106 and 107 for a future release or
11 threatened release of hazardous substances from such facility at a
12 future time. This Paragraph E does not apply and shall not be
13 construed to apply to the disposal of hazardous substances off of the
14 Site in any type of facility other than that specifically referred to
15 in this Paragraph E. This Paragraph E shall take effect upon issuance
16 by EPA of the Certificate of Completion provided for in Paragraph A of
17 Section XXIX (Completion of the Remedial Action).

18 F. Notwithstanding any other provision of this Consent Decree,
19 this covenant not to sue shall not relieve the Settling Defendants of
20 their obligation to meet and maintain compliance with the requirements
21 set forth in this Consent Decree, including the complete
22 implementation of the ROD (Appendix A), which is incorporated herein
23 by reference.
24
25
26

1 G. Settling Defendants hereby release and covenant not to sue
2 the United States, including any and all departments, agencies,
3 officers, administrators, and representatives thereof, for any claim,
4 cross-claim, or counter-claim asserted, or that could have been
5 asserted, on or before the effective date of this Consent Decree
6 arising out of or relating to the Site.

7 H. Nothing in this Consent Decree shall constitute or be
8 construed as a release or a covenant not to sue regarding any claim or
9 cause of action against any person, firm, trust, joint venture,
10 partnership, corporation or other entity not a signatory to this
11 Consent Decree for any liability it may have arising out of or
12 relating to the Site.

13 I. The parties to this Consent Decree agree that the United
14 States shall be under no obligation to assist the Settling Defendants
15 in any way in defending against suits for contribution brought against
16 the Settling Defendants which allege liability for matters covered by
17 this covenant not to sue by persons or entities that have not entered
18 into this settlement.

19 XXVI. COMMUNITY RELATIONS

20 Settling Defendants shall cooperate with Plaintiff in providing
21 information to the public. As requested by Plaintiff, Settling
22 Defendants shall participate in the preparation of all appropriate
23 information disseminated to the public and in public meetings(s) which
24 may be held or sponsored by Plaintiff to explain activities at the
25 Site.

1 XXVII. PUBLIC PARTICIPATION

2 A. Plaintiff will publish notice of the availability for review
3 and comment of this Consent Decree upon its lodging with the United
4 States District Court as a proposed settlement in this matter.

5 B. Plaintiff will provide persons who are not parties to the
6 proposed settlement with the opportunity to file written comments
7 during at least a thirty (30) day period following such notice. In
8 addition, Plaintiff intends to hold an informal public meeting in
9 Cloverdale, California during this period to receive either written or
10 oral comments. Plaintiff will file with the Court a copy of any
11 comments received and Plaintiff's responses to such comments.

12 C. If after the closing of the public comment period, Plaintiff,
13 upon review of all comments, determines that the comments disclose
14 facts or considerations which indicate that the proposed settlement is
15 inappropriate, improper or inadequate, Plaintiff may withdraw or
16 withhold consent.

17 XXVIII. NOTICE TO THE STATE

18 Plaintiff has notified the State of California pursuant to the
19 requirements of Section 106(a) of CERCLA, 42 U.S.C. § 9606.

20 XXIX. COMPLETION OF THE REMEDIAL ACTION

21 A. EPA shall issue a Certificate of Completion stating that the
22 Remedial Action with respect to the Demolition and Excavation Work has
23 been completed when all of the following have occurred with respect to
24 the contaminated soil and concrete: (1) construction activities are
25 complete; (2) all hazardous substances required to be disposed of
26

1 off-Site are disposed of in the required manner; and (3) it has been
2 demonstrated, through the monitoring required by the Demolition and
3 Excavation Monitoring Plans, that the remedy is successfully attaining
4 the requirements of the ROD and the Scope of Work. A detailed list of
5 the activities necessary for completion of the Remedial Action with
6 respect to the Demolition and Excavation Work is contained in
7 Paragraph A of Appendix C.

8 B. EPA shall issue a Certificate of Completion stating that the
9 Remedial Action with respect to the VOC Groundwater Work has been
10 completed when EPA determines that: (1) required construction
11 activities, if any, are complete; (2) it has been demonstrated,
12 through the monitoring required by the VOC Groundwater Monitoring
13 Plan, that the remedy is successfully attaining the clean-up levels
14 required by Paragraph 2.15 of the Scope of Work. A detailed list of
15 the activities necessary for completion of the Remedial Action with
16 respect to the Demolition and Excavation Work is contained in
17 Paragraph B of Appendix C.

18 C. Except as specifically provided for in Paragraph E of Section
19 XXV (Covenant Not to Sue), the Remedial Action shall not be deemed
20 completed for purposes of CERCLA Section 122(f)(3) and Section XXV
21 (Covenant Not To Sue) of this Consent Decree until both Certificates
22 of Completion are issued pursuant to Paragraphs A and B of this
23 Section XXIX.

1 D. When Settling Defendants determine that the Remedial Action
2 for the Demolition and Excavation Work or the VOC Groundwater Work has
3 been completed, they shall submit to EPA a Remedy Certification Report
4 for the relevant portion of the Remedial Action pursuant to the Scope
5 of Work. Within ninety (90) days of receiving the Remedy
6 Certification Report, EPA shall either (1) issue a Certificate of
7 Completion for the relevant portion of the Remedial Action, or (2)
8 deny certification and notify the Settling Defendants in writing of
9 work that remains to be completed prior to certification.

10 E. If EPA denies certification, the Settling Defendants shall
11 either (1) expeditiously complete the work EPA describes as necessary
12 for completion, and submit a new Remedy Certification Report, or (2)
13 invoke the Dispute Resolution process of Section XX (Dispute
14 Resolution) of this Consent Decree. If EPA fails to respond within
15 ninety (90) days of receiving the Remedy Certification Report, then
16 Settling Defendants may invoke the dispute resolution procedures of
17 Section XX (Dispute Resolution) of this Consent Decree.

18 XXX. INSURANCE

19 A. Before starting any of the on-site Remedial Work required by
20 this Consent Decree, Settling Defendants shall obtain or require their
21 construction contractor(s) or subcontractor(s) to obtain a policy or
22 policies of insurance providing at least the following coverage in
23 connection with the activities to be performed by such construction
24 contractors or subcontractors at the Site pursuant to this Consent
25 Decree:
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1 1. Comprehensive General Liability Insurance, including, as
2 appropriate, Contractor Protective Coverage, in an amount of not less
3 than two million dollars (\$2,000,000) per occurrence, combined single
4 limit;

5 2. Automobile Liability Insurance in an amount of not less than
6 one million dollars (\$1,000,000) per occurrence;

7 3. Workers' Compensation Insurance adequate to meet the
8 statutory requirements of all jurisdictions having authority over such
9 claims, including but not limited to the State of California, and
10 Employer's Liability Insurance in an amount of not less than one
11 million dollars (\$1,000,000) per occurrence.

12 B. Before starting any of the onsite Remedial Work required by
13 this Consent Decree, Settling Defendants shall require their
14 professional engineering consultants to obtain Professional Liability
15 Insurance in an amount of not less than one million dollars
16 (\$1,000,000) per occurrence.

17 C. Settling Defendants shall maintain or require their
18 construction contractors, subcontractors, or professional engineering
19 consultants to maintain the insurance described in Paragraphs A and B
20 of this Section XXX in force until EPA issues both Certificates of
21 Completion in accordance with Section XXIX (Completion of the Remedial
22 Action); provided, however, that in the event that a construction
23 contractor, subcontractor, or professional engineering consultant
24 completes a discrete portion of on-site Remedial Work and that
25 contractor, subcontractor, or consultant is to perform no further
26

1 Remedial Work at the Site, Settling Defendants or the contractor,
2 subcontractor, or consultant, as the case may be, shall not be
3 required to continue to maintain the insurance required by this
4 Section XXX for that particular contractor, subcontractor, or
5 consultant, as long as the policy of insurance is not a "claims made"
6 policy.

7 D. Before starting any of the on-site Remedial Work required by
8 this Consent Decree, and annually after starting such Remedial Work,
9 Settling Defendants shall submit to EPA certificates of insurance
10 documenting the coverage maintained in compliance with this Section
11 and copies of the sections of the insurance policies that describe the
12 limits and coverage required pursuant to this Section XXX.

13 E. Anything herein notwithstanding, in no event are Settling
14 Defendants relieved of their obligation to implement the Remedial Work
15 in a timely fashion by reason of their failure to obtain or maintain
16 in force any insurance coverage required by this Section XXX.
17 However, if Settling Defendants or its Contractors are unable to
18 obtain or maintain in force any insurance coverage required by this
19 Section XXX because such coverage is not reasonably available to the
20 Settling Defendants, Settling Defendants may invoke the force majeure
21 provisions found in Section XXI (Force Majeure and Other Delays) of
22 this Consent Decree. In no event are Settling Defendants relieved of
23 their obligation to implement the Remedial Work in a timely fashion by
24 reason of any dispute between Settling Defendants and any of its
25
26

1 insurers concerning any claim arising out of the design,
2 implementation or operation of the Remedial Work or arising out of any
3 other activity required by this Consent Decree.

4 XXXI. INDEMNIFICATION OF THE UNITED STATES

5 A. Notwithstanding any approvals which may be granted by the
6 United States or other government entities, Settling Defendants agree
7 to indemnify the United States and save and hold harmless the United
8 States government, its officials, employees, agencies, departments,
9 agents and contractors for any and all claims or causes of action
10 arising from any injuries or damages to persons or property resulting
11 from any acts or omissions of the Settling Defendants, their officers,
12 assigns, employees, agents, receivers, trustees, successors,
13 Contractors, or any other person acting on their behalf in carrying
14 out any activities pursuant to the terms of this Consent Decree. EPA
15 is not a party to any contract involving the Settling Defendants at
16 the Site.

17 B. The United States is, to the extent allowed by law,
18 responsible for any injury or loss to persons or property proximately
19 caused by an act or omission of the United States or its employees,
20 agents, contractors, and subcontractors.

21 XXII. OTHER CLAIMS

22 This Consent Decree does not constitute a preauthorization of
23 funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). In
24 consideration of entry of this Consent Decree, Settling Defendants
25 agree not to make any claims pursuant to CERCLA Sections 106(b)(2),
26

1 111 or 112, 42 U.S.C. §§ 9606(b)(2), 9611, or 9612, or any other
2 provisions of law directly or indirectly against the Hazardous
3 Substances Superfund, and not to make any other claims against the
4 United States for costs expended by or on behalf of Settling
5 Defendants in connection with this Consent Decree.

6 XXXIII. CONTINUING JURISDICTION

7 The Court specifically retains jurisdiction over both the subject
8 matter of and the Parties to this action for the duration of this
9 Consent Decree for the purposes of issuing such further orders or
10 directions as may be necessary or appropriate to construe, implement,
11 modify, enforce, or terminate the terms of this Consent Decree or for
12 any further relief as the interest of justice may require.

13 XXXIV. REPRESENTATIVE AUTHORITY

14 Each undersigned representative of the Parties to this Consent
15 Decree certifies that he or she is fully authorized to enter into the
16 terms and conditions of this Consent Decree, to execute this Consent
17 Decree, and to legally bind to this Consent Decree the corporation or
18 government entity he or she represents.

19 XXXV. TERMINATION AND SATISFACTION

20 The provisions of this Consent Decree shall be deemed
21 satisfied, and this Consent Decree shall terminate upon EPA's issuance
22 of both of the Certificates of Completion referred to in Section XXIX
23 (Completion of the Remedial Action) of this Consent Decree, except
24
25
26

1 that the terms of Section XXV (Covenant Not to Sue) and Section XV
2 (Retention of Records) shall survive the termination of this Consent
3 Decree.

4 XXXVI. EFFECTIVE DATE

5 This Consent Decree is effective upon the date of its entry by
6 the Court.

7 XXXVII. SECTION HEADINGS

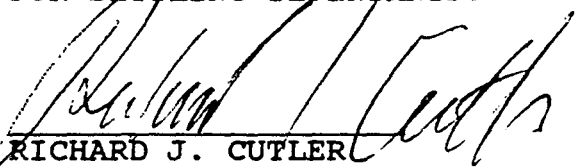
8 The Section heading set forth in this Consent Decree and its
9 Table of Contents are included for convenience of reference only and
10 shall be disregarded in the construction and interpretation of any
11 provision of this Consent Decree.

12
13 This Consent Decree is entered on this ____ day of _____, 1989.

14
15
16 _____
17 UNITED STATES DISTRICT JUDGE
18

19 By the signatures below, the Parties hereby consent to the foregoing
20 Consent Decree:

21
22 FOR SETTLING DEFENDANTS:

23
24 
25 RICHARD J. CUTLER
26 Vice President of and General Counsel for
TBG Inc.

DATE: 6/29/89

1
2
3 Ronald I. Parker
4 RONALD I. PARKER
5 Chairman, President and C.E.O for
6 Indian Head Industries, Inc.
7

DATE: June 29, 1989

8 FOR THE PLAINTIFF, UNITED STATES:

9 Richard B. Stewart
10 RICHARD B. STEWART
11 Assistant Attorney General
12 Land and Natural Resources Division
13 U.S. Department of Justice
14 Washington, D.C. 20044

DATE: 10.29.89

15 United States Attorney

16
17 Paul E. Locke
18 Assistant United States Attorney
19
20
21

DATE: 11-22-89

22
23 Edward E. Reich
24 EDWARD E. REICH
25 Acting Assistant Administrator for
26 Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

DATE: 8/30/89

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John Wise
DANIEL W. MCGOVERN *for*
Regional Administrator
U.S. Environmental Protection Agency
Region IX
215 Fremont Street
San Francisco, California 94105

DATE: 7.11.89

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6 SCOPE OF WORK FOR
7 REMEDIAL DESIGN AND REMEDIAL ACTION
8

9 1.0 THE REMEDIAL DESIGN/REMEDIAL ACTION PROJECT

10 As described in the Record of Decision ("ROD") for
11 the MGM Brakes Site ("Site") (Appendix A to the Consent
12 Decree), the selected remedial action for the Site was divided
13 into three parts to provide options for performing the remedial
14 action in two stages several years apart. This Scope of Work
15 describes the Remedial Work as one project to be performed
16 within one time frame. The Remedial Work includes the work
17 required to perform the additional studies needed for Remedial
18 Design (the "Additional Studies Work"), to demolish the Casting
19 Plant (the "Demolition Work"), to accomplish the PCB and VOC
20 soil and concrete excavation for the Site (the "Excavation
21 Work") and the work required to complete the investigation and
22 remediation of VOCs detected in groundwater at the Site (the
23 "VOC Groundwater Work"), all as more fully described below.
24 All of the terms defined in the Consent Decree shall have the
25 same meaning when used herein. This Scope of Work may be
26

1 modified only pursuant to Section VII (Work To Be Performed)
2 and Section XXIII (Modification) of the Consent Decree.
3

4 2.0 SUMMARY OF THE REMEDIAL WORK

5 The Remedial Design and Remedial Action shall
6 accomplish the following:

7 2.1 Establishment of a staging area for remedial and
8 oversight activities.

9 2.2 Additional Studies sampling on the Site and
10 outside the perimeter of the known areas of PCB
11 contamination at the Site to verify the vertical and
12 horizontal extent of PCB contamination as may be required
13 for purposes of preparing the Remedial Design Plans and
14 Specifications ("RD Plans and Specifications"). At a
15 minimum, this shall include surface soil sampling in the
16 vicinity of wells numbered B-31, B-32, B-45, and B-48.

17 2.3 Additional Studies sampling of soils located on
18 the Property to characterize the horizontal and vertical
19 extent of VOCs (TCE, DCE, Vinyl chloride, and Benzene) in
20 soil at the Site as may be required for purposes of
21 preparing the RD Plans and Specifications.

22 2.4 Demolition of the MGM Brakes Casting Plant,
23 including decontamination of any PCB contaminated equipment
24 or material, that is intended for reuse or other recycling,
25 to the levels set forth in subsection 761.125(c)(3) of the
26 PCB Spill Cleanup Policy set forth at 40 C.F.R § 761.125.

1 Disposal of all other equipment or material at an
2 appropriate disposal facility in accordance with law.

3 2.5 Excavation and removal of soils and concrete on
4 the Site containing PCBs at concentrations greater than
5 10 mg/kg.

6 2.6 Excavation of sediments in the drainage ditch
7 leading from the Property, and of any surface soils (the
8 top six (6) inches of soil prior to excavation) on the Site
9 outside of the area on the Property to be capped or
10 backfilled with clean soil, which contain PCBs at
11 concentrations greater than 1 mg/kg and less than or equal
12 to 10 mg/kg and have the potential to enter surface water.

13 2.7 Excavation of: (1) any unsaturated zone soils,
14 (2) saturated zone soils which may be a significant source
15 of VOCs in groundwater, and (3) concrete on the Property
16 containing VOCs in concentrations greater than 5 ppm TCE,
17 8 ppm 1,2 DCE, 0.53 ppm Benzene, and 0.03 ppm Vinyl
18 Chloride. For the purposes of this Scope of Work and
19 Appendix C to the Consent Decree, saturated soils that
20 contain VOCs solely because of their contact with
21 groundwater containing VOCs shall not be considered a
22 significant source of VOCs in groundwater.

23 2.8 Disposal of soils and concrete removed from the
24 Site at a facility in compliance with Section 121(d)(3) of
25 the Comprehensive Environmental Response Compensation and
26 Liability Act, as amended ("CERCLA"). Excavated soils and

1 concrete containing detectable levels of VOCs may be
2 treated on-Site to less than or equal to the levels stated
3 in paragraph 2.7 hereof if such treatment is approved by
4 EPA, or shall be disposed of off-Site at a facility
5 regulated under the Resource Conservation and Recovery Act
6 ("RCRA"), or, if land disposal is prohibited under RCRA
7 land disposal regulations, then treated as approved by EPA
8 and/or disposed of in accordance with the applicable RCRA
9 regulations. Excavated soils and concrete containing
10 concentrations of PCBs greater than or equal to 50 mg/kg
11 shall be disposed of at a facility regulated under the
12 Toxic Substances Control Act. Excavated soils and concrete
13 containing PCBs less than 50 mg/kg but more than 10 mg/kg
14 shall be disposed of at a facility regulated by the State
15 of California and approved by the relevant California
16 Regional Water Quality Control Board or at a facility
17 located outside of California, regulated under the law of
18 the state in which the facility is located. Excavated
19 concrete and soils containing PCBs in concentrations equal
20 to or less than 10 mg/kg and more than 1 mg/kg may be
21 consolidated in the excavation area on the Property and
22 covered with at least 10 inches of clean soil.

23 2.9 Dewatering of soil excavated below the water
24 table, to the extent required under applicable state or
25 federal law for purposes of proper land disposal, and
26

1 dewatering of the excavation as necessary to perform the
2 excavation. Water produced during dewatering of soils or
3 dewatering of the excavation shall be treated to meet
4 applicable or relevant and appropriate requirements (ARARs)
5 identified in the ROD. Sediments removed from dewatered
6 groundwater shall be managed in accordance with
7 requirements for managing excavated soils containing PCBs
8 set forth in paragraph 2.8 hereof.

9 2.10 Discharge of treated dewatered groundwater in
10 compliance with the ARARs identified in the ROD.

11 2.11 Direction of surface water away from the Site
12 and replacement, regrading, compaction and revegetation or
13 paving of soils on the Site to prevent erosion.

14 2.12 Soil sampling during and after excavation to
15 confirm achievement of the 10 mg/kg PCB cleanup level for
16 subsurface soil; the 1 mg/kg PCB cleanup level for surface
17 soil; and the 5 mg/kg TCE, 8 mg/kg 1,2 DCE, 0.03 mg/kg
18 Vinyl Chloride, and 0.53 mg/kg Benzene cleanup levels for
19 unsaturated zone soils and saturated zone soils which may
20 be a significant source of VOCs in groundwater. Surface
21 water sampling after final cover is in place to confirm
22 that PCBs are not detected in surface water in
23 concentrations above 0.5 parts per billion (ppb).

24 2.13 Installation of additional downgradient wells to
25 determine the horizontal and vertical extent of VOCs in
26

1 groundwater at the Site.

2 2.14 Evaluation of groundwater remedial action
3 alternatives, and recommendation of a preferred
4 alternative, in accordance with the NCP and EPA's Guidance
5 on Remedial Actions for Contaminated Groundwater at
6 Superfund Sites (December 1988), or any superceding final
7 version of such guidance. Such remedial action
8 alternatives shall include, among others, a no action
9 alternative. Unless a waiver is obtained pursuant to
10 paragraph 2.16 hereof, the recommended remedial action
11 alternative shall be designed to restore groundwater to the
12 following clean-up levels:

13 (a) For substances for which a federal maximum
14 contaminant level (MCL) exists, the chemical specific
15 MCL;

16 (b) For substances for which no MCL exists, the
17 proposed MCL or the federal maximum contaminant level
18 goal (MCLG) or other appropriate level that protects
19 the beneficial uses of the aquifer at a risk level of
20 10^{-6} ; and

21 (c) If MCLs, MCLGs, or such other appropriate
22 levels will not achieve a risk range of 10^{-6} to 10^{-4}
23 for cumulative risks, then the recommended remedial
24 action alternative shall be designed to restore
25 groundwater to such a risk range for cumulative risks.
26

1 2.15 Implementation of the recommended remedial
2 action alternative, as approved by EPA, to restore
3 groundwater to the levels set forth in paragraph 2.14
4 hereof or, if a waiver is granted pursuant to paragraph
5 2.16 hereof, then to the levels, if any, required by such
6 waiver.

7 2.16 Petition for waiver of compliance with ARARs.

8 (a) Settling Defendants may petition EPA to
9 waive compliance with any ARAR, including one or more
10 of the clean-up levels set forth in paragraph 2.14
11 hereof, based upon a demonstration that such ARAR
12 should be waived pursuant to § 121(d)(4) (A), (B),
13 (C), (D) or (E) of CERCLA, 42 U.S.C. § 9621(d)(4) (A),
14 (B), (C), (D) or (E).

15 (b) EPA shall review and consider the
16 information in the Petition submitted pursuant to
17 subparagraph 2.16 (a) and shall make a determination,
18 in accordance with applicable laws and regulations in
19 effect at the time of the Petition, as to whether
20 compliance with any ARARs shall be waived and, if so,
21 what alternative standards or requirements shall be
22 established.

23 (c) Settling Defendants may challenge EPA's
24 determination under subparagraph 2.16 (b) pursuant to
25 the procedures set forth in Section XX (Dispute
26

1 Resolution) of the Consent Decree.

2 (d) The provisions of this paragraph 2.16 shall
3 relate solely to the groundwater portion of the
4 Remedial Action.

5 3.0 THE REMEDIAL DESIGN (RD) TASKS

6 3.1 The objective of the Remedial Design (RD) is to
7 develop complete RD Plans and Specifications for the
8 Remedial Action elements described in Section 2.0 of this
9 Scope of Work. The Remedial Design shall be completed in
10 accordance with this Scope of Work, the Superfund Remedial
11 Design and Remedial Action Guidance Document (OSWER
12 Directive 9355.04A, June 1986), and EPA guidances entitled
13 Preparation of A Region 9 Sampling Plan (November 18, 1987)
14 and Interim Guidelines and Specifications for Preparing
15 Quality Assurance Project Plans (QAMS-005/80) (copies have
16 been provided to Settling Defendants). If any part of the
17 Remedial Action is performed by the Remedial Design
18 engineer, and the relevant Remedial Action contract is not
19 put out for bidding, then the relevant RD Plans and
20 Specifications shall provide the level of detail needed to
21 carry out the Remedial Action and need not provide the
22 level of detail needed for preparation of contract bid
23 documents.

24 3.2 The Preliminary RD Plans and Specifications
25 submitted as a preliminary draft document at thirty (30)
26

1 percent completion of the design should contain a detailed
2 description of the Remedial Action Tasks as proposed by the
3 Settling Defendants' Remedial Design engineer. The
4 Preliminary RD Plans and Specifications are intended to
5 provide EPA, the State, and other interested parties with
6 information to evaluate the Remedial Action for compliance
7 with ARARs, this Scope of Work, the Consent Decree, and
8 good engineering practices. The Preliminary RD Plans and
9 Specifications should contain a relatively complete
10 description of the Remedial Action and the sequence of
11 events. They need not contain detailed specifications,
12 costs, or engineering design drawings. Drawings should be
13 limited to those necessary to aid the reviewer in
14 understanding the text.

15 At a minimum the text should include the following
16 items as appropriate for the respective Remedial Design
17 element.

- 18 (a) A description of the sequence of events for the
19 Remedial Action from beginning to end (i.e., from
20 establishment of a staging area through final
21 acceptance of the Action).
- 22 (b) Figures/drawings indicating proposed locations of
23 all surface facilities and activities referred to
24 in the text, including:
- 25 (i) staging area
26

- 1 (ii) stockpile areas
2 (iii) excavation area
3 (iv) support area
4 (v) access/ingress/egress
5 (vi) decontamination area
6 (vii) location of monitoring wells
7 (viii) location of groundwater treatment or
8 containment system(s)
9 (c) A description of protocols for handling and
10 separation of soil.
11 (d) A summary of sampling and analytical protocols
12 for the classification and handling of soil.
13 Action criteria must be included. (Specific
14 details will be in QAPP/SAPs).
15 (e) Plan for dewatering of the excavation and soils,
16 and the proposed method of disposal of such water.
17 (f) A description of and the performance criteria for
18 proposed wastewater treatment options, if on-Site
19 treatment is to be used.
20 (g) Identification of proposed soil disposal
21 facilities.
22 (h) A description of monitoring activities that will
23 take place during remediation (details of
24 monitoring will be in the relevant monitoring
25 plans).
26

- 1 (i) A description of all permits, approvals or
2 variances required for off-Site Remedial Work.
3 (j) A description of contaminated soil/materials
4 handling and transportation protocols.
5 (k) A description of VOC groundwater treatment or
6 control system/measures.
7 (l) A description of inspections, their purposes, and
8 the timeframe in which they are expected to occur.
9 (m) A description of reports that are expected to be
10 generated during the course of the remedial
11 action construction.
12 (n) A description of the procedures for the
13 demobilization of construction contractors.

14 3.3 The RD Tasks, which are described in
15 Paragraph 3.4, shall be performed in accordance with the
16 following:

- 17 (a) Estimated Cost of Remedial Action. If
18 performance of any part of the Remedial Action is
19 to be put out to bid, then an estimate of the
20 Remedial Action costs shall be prepared for
21 purposes of the construction contract bid package
22 and submitted to EPA for review and comment
23 together with the prefinal RD Plans and
24 Specifications. Following review, appropriate
25 EPA corrections or changes shall be incorporated
26

1 into the estimate of Remedial Action costs and
2 the revised costs submitted with the final RD
3 Plans and Specifications.

4 (b) Coordinating Between RD Plans and
5 Specifications. The coordination of drawings and
6 specifications shall be consistent throughout the
7 preparation of RD Plans and Specifications. Any
8 required cross-reference between drawings and
9 specifications shall be clearly indicated.

10 (c) Selection of an Appropriate Off-Site Disposal
11 Facility. The RD Plans and Specifications shall
12 include a provision to solicit from off-Site
13 disposal facility bidders the information
14 needed to evaluate their compliance with
15 Section 121(d)(3) of CERCLA and EPA's policy
16 entitled "Revised Procedures for Planning and
17 Implementing Off-Site Response Actions (OSWER
18 Directive 9834.11, November 13, 1987) (copy
19 provided to the Settling Defendants) or any final
20 amended or superseding version of this document.
21 This provision applies to all three of the
22 following types of facilities: Toxics Substances
23 Control Act (TSCA) facilities, Resource
24 Conservation and Recovery Act (RCRA) facilities,
25 and facilities regulated under
26

1 applicable state law in which the facility is
2 located.

3 (d) Compliance with ARARs. All ARARs identified in
4 the ROD shall be incorporated into the relevant
5 RD Plans and Specifications. The following
6 information shall be included in the relevant
7 Preliminary RD Plans and Specifications: (1) a
8 list of the necessary permits, approvals or
9 variances required for work performed off-Site;
10 (2) the appropriate regulatory authorities from
11 whom such permits, approvals or variances must be
12 sought; and (3) the time required to process such
13 permit applications or obtain such approvals or
14 variances. Any correspondence from agencies
15 which details permit, approval or variance
16 requirements or indicates that a permit, approval
17 or variance is not necessary, shall be submitted
18 to EPA with the relevant Preliminary RD Plans and
19 Specifications.

20 3.4 Remedial Design Tasks.

21 RD Task 1: Remedial Design Work Plan (RD Work Plan).

22 An RD Work Plan shall be prepared. The RD Work Plan
23 shall contain the schedule and specific approach to be
24 used in implementing the following RD Tasks 2 through
25 6. A draft RD Work Plan shall be prepared and
26

1 submitted to EPA for review and comment. Settling
2 Defendants shall incorporate any changes requested by
3 EPA and submit a proposed final RD Work Plan to EPA
4 for review and approval. EPA shall notify Settling
5 Defendants of its approval, disapproval, or approval
6 with conditions. Settling Defendants shall implement
7 the final RD Work Plan, as approved by EPA, in
8 accordance with the Schedule set forth in Section 4.0
9 of this Scope of Work.

10 RD Task 2: Quality Assurance Project Plans and Site
11 Health & Safety Plans.

- 12 (a) RD Quality Assurance Project Plan (RD-QAPP). A
13 site-specific RD-QAPP shall be prepared as a
14 guideline for quality control (QC) and quality
15 assurance (QA) responsibilities during the
16 Remedial Design Tasks involving sampling and
17 analysis. The RD-QAPP shall be consistent with
18 EPA guidance entitled Interim Guidelines and
19 Specifications for Preparing Quality Assurance
20 Project Plans (QAMS-005/80) (copy has been
21 provided to the Settling Defendants) or any final
22 amended or superseding version of this document,
23 pursuant to Paragraph A of Section X (Quality
24 Assurance/Quality Control Plans) of the Consent
25 Decree. A draft RD-QAPP shall be prepared and
26

1 submitted to EPA for review and comment with the
2 draft Additional Studies Sampling Plan. Settling
3 Defendants shall incorporate any changes
4 requested by EPA and submit a proposed final
5 RD-QAPP to EPA for review and approval. EPA
6 shall notify Settling Defendants of its approval,
7 disapproval, or approval with conditions.
8 Settling Defendants shall implement the final
9 RD-QAPP, as approved by EPA, and perform sampling
10 and analysis during the Remedial Design Tasks in
11 accordance with the final RD-QAPP, as approved by
12 EPA.

13 (b) RD Site Health & Safety Plan (RD-HSP). A
14 site-specific RD-HSP shall be prepared which
15 provides safety specifications designed to
16 protect on-Site personnel and surrounding
17 community from the physical and chemical hazards
18 at the Site during the Remedial Design Tasks
19 involving activities on the Site. These
20 specifications shall describe the minimum health,
21 safety, monitoring, and emergency response
22 requirements for which consultants and
23 contractors performing on-Site Remedial Design
24 Work shall be held responsible. The draft RD-HSP
25 shall be prepared and submitted to EPA for review
26

1 and comment with the draft Additional Studies
2 Sampling Plan. Settling Defendants shall
3 incorporate any appropriate changes requested by
4 EPA and submit a final RD-HSP to EPA with the
5 final Additional Studies Sampling Plan.

6 (c) RA Quality Assurance Project Plan (RA-QAPP).

7 Settling Defendants shall modify the final
8 RD-QAPP prepared under RD Task 2(b) to
9 incorporate any changes or additions needed for
10 purposes of implementing the Remedial Action
11 Tasks involving sampling and analysis and submit
12 the draft RA-QAPP to EPA for review and comment.
13 Settling Defendants shall incorporate any changes
14 requested by EPA and submit a proposed final
15 RA-QAPP to EPA for approval. EPA shall notify
16 Settling Defendants of its approval, disapproval,
17 or approval with conditions. Settling Defendants
18 shall implement the final RA-QAPP, as approved by
19 EPA, and perform sampling and analysis during
20 Remedial Action Tasks in accordance with the
21 final RD-QAPP, as approved by EPA.

22 (d) RA Site Health & Safety Plan (RA-HSP). After
23 completion of the Remedial Design Tasks, Settling
24 Defendants shall modify the final RD-HSP prepared
25 under RD Task 2(b) to incorporate any changes or
26

1 additions needed for purposes of implementing the
2 Remedial Action Tasks. The RA-HSP shall include
3 specifications which describe the minimum health,
4 safety, monitoring, and emergency response
5 requirements for which the construction
6 contractor(s) shall be held responsible during
7 implementation of the Remedial Action Tasks. The
8 Settling Defendants shall require the
9 construction contractor(s) to prepare a Site
10 health and safety plan which includes at least
11 the aforementioned minimum requirements.
12 Settling Defendants shall submit the draft RA-HSP
13 to EPA for review and comment together with the
14 draft Remedial Action Work Plan. Settling
15 Defendants shall incorporate any appropriate
16 changes requested by EPA and submit a final
17 RA-HSP to EPA. Settling Defendants shall perform
18 the Remedial Action Tasks in accordance with the
19 final RA-HSP.

20 RD Task 3: Additional Studies Work.

- 21 (a) Additional Sampling of Soils and Concrete for
22 PCBs and VOCs. The PCB and VOC database for the
23 soil and concrete at the Site shall be reviewed
24 to determine whether additional data are needed
25 to characterize the vertical and horizontal
26

1 extent of PCBs and VOCs in soils and concrete at
2 the Site, including soils and concrete below the
3 Casting Plant at the Site, for purposes of
4 preparing the Demolition and Excavation Plans and
5 Specifications. An Additional Studies Sampling
6 Plan for Soils and Concrete shall be prepared to
7 collect any such additional PCB and VOC data
8 required. The conclusions of the data review
9 shall be reported in the draft Additional Studies
10 Sampling Plan for Soils and Concrete and shall be
11 used to justify the sampling locations. The
12 Additional Studies Sampling Plan for Soils and
13 Concrete shall, at a minimum, require collection
14 of PCB surface soil samples in the vicinity of
15 wells numbered B-31, B-32, B-45 and B-48. In
16 areas of recent fill activity, any sampling
17 performed shall be taken to a depth below the
18 fill. The Additional Studies Sampling Plan for
19 Soils and Concrete shall include a provision
20 whereby, with EPA approval, the Plan may be
21 amended from time to time prior to the
22 preparation of draft Technical Memorandum No. 1
23 based on the results of additional studies
24 sampling and analyses and for the purpose of
25 obtaining all additional PCB and VOC data that
26

1 EPA deems necessary to prepare the Demolition and
2 Excavation Plans and Specifications. The draft
3 Additional Studies Sampling Plan for Soils and
4 Concrete shall be developed in accordance with
5 EPA Region 9 guidance entitled, Preparation of a
6 Region 9 Sampling Plan (November 18, 1987) (copy
7 has been provided to the Settling Defendants) and
8 submitted to EPA for review and comment.

9 Settling Defendants shall incorporate any changes
10 requested by EPA, and submit a proposed final
11 Additional Studies Sampling Plan for Soils and
12 Concrete to EPA for review and approval. EPA
13 shall notify Settling Defendants of its approval,
14 disapproval, or approval with conditions, and
15 Settling Defendants shall implement the final
16 Additional Studies Sampling Plan for Soils and
17 Concrete, as approved by EPA, in accordance with
18 the Schedule set forth in the Additional Studies
19 Sampling Plan for Soils and Concrete, as approved
20 by EPA, and as it may be amended from time to
21 time with EPA approval during the additional
22 studies work.

23 (b) Technical Memorandum No. 1. Upon completion of
24 the additional studies under RD Task 3(a), a
25 draft Technical Memorandum No. 1 shall be
26

1 prepared which summarizes the results of
2 implementing the Additional Studies Sampling Plan
3 for Soils and Concrete and draws conclusions
4 regarding the adequacy of the database for the
5 purpose of preparing RD Plans and Specifications
6 for the Excavation Work. Soils and concrete on
7 the Site containing PCBs at concentrations
8 greater than 10 mg/kg shall be designated for
9 excavation and off-Site disposal. Soils which
10 contain PCBs in concentrations equal to or less
11 than 10 mg/kg and greater than 1 mg/kg, and which
12 have the potential to migrate into surface water,
13 shall be designated for excavation and off-Site
14 disposal or for consolidation in the excavation
15 area on the Property and capping with 10 inches
16 or more of clean soil. Unsaturated zone soils
17 and saturated zone soils which may be a
18 significant source of VOCs in groundwater shall
19 be designated for remediation if they contain
20 VOCs in concentrations greater than 5 mg/kg TCE,
21 8 mg/kg 1,2 DCE, 0.03 mg/kg Vinyl Chloride and
22 0.53 mg/kg Benzene. The draft Technical
23 Memorandum No. 1 shall be submitted to EPA for
24 review and comment. Settling Defendants shall
25 incorporate any changes requested by EPA and
26

1 submit a proposed final Technical Memorandum
2 No. 1 to EPA for review and approval. EPA shall
3 notify Settling Defendants of its approval,
4 disapproval, or approval with conditions.
5 Settling Defendants shall base the Excavation
6 Plans and Specifications on the information
7 contained in the final Technical Memorandum
8 No. 1, as approved by EPA.

9 (c) Additional Sampling of Groundwater for VOCs. The
10 existing database for VOCs in groundwater at the
11 Site shall be reviewed to determine what
12 additional data are needed to characterize the
13 horizontal and vertical extent of VOCs in
14 groundwater at the Site for purposes of
15 evaluating remedial action alternatives. An
16 Additional Studies Sampling Plan for Groundwater
17 shall be prepared to collect such data. The
18 Additional Studies Sampling Plan for Groundwater
19 shall include a provision whereby, with EPA
20 approval, the Plan may be amended from time to
21 time prior to the preparation of draft Technical
22 Memorandum No. 2, based on the results of
23 additional studies sampling and analyses and for
24 the purpose of obtaining all additional VOC data
25 that EPA deems necessary to prepare Technical
26

1 Memorandum No. 3. The draft Additional Studies
2 Sampling Plan for Groundwater shall be developed
3 in accordance with EPA Region 9 guidance
4 entitled, Preparation of a Region 9 Sampling Plan
5 (November 18, 1987) (a copy has been provided to
6 the Settling Defendants) and submitted to EPA for
7 review and comment. Settling Defendants shall
8 incorporate any changes requested by EPA and
9 submit a proposed final Additional Studies
10 Sampling Plan for Groundwater to EPA for review
11 and approval. EPA shall notify Settling
12 Defendants of its approval, disapproval, or
13 approval with conditions. Settling Defendants
14 shall implement the final Additional Studies
15 Sampling Plan for Groundwater, as approved by
16 EPA, in accordance with the Schedule set forth in
17 the Additional Studies Sampling Plan for
18 Groundwater, as approved by EPA, and as it may be
19 amended from time to time with EPA approval
20 during the additional studies work.

- 21 (d) Technical Memorandum No. 2. Upon completion of
22 the additional studies under RD Task 3(c), a
23 draft Technical Memorandum No. 2, shall be
24 prepared which summarizes the results of
25 implementing the Additional Studies Sampling Plan
26

1 for Groundwater and draws conclusions regarding
2 the adequacy of the database for the purpose of
3 evaluating groundwater remedial action
4 alternatives. Draft Technical Memorandum No. 2
5 shall be submitted to EPA for review and
6 comment. Settling Defendants shall incorporate
7 any changes requested by EPA, and submit a
8 proposed final Technical Memorandum No. 2 to EPA
9 for review and approval. EPA shall notify
10 Settling Defendants of its approval, disapproval,
11 or approval with conditions.

- 12 (e) Technical Memorandum No. 3. After receiving EPA
13 approval of the final Technical Memorandum No. 2,
14 Technical Memorandum No. 3 shall be prepared to
15 evaluate remedial action alternatives and
16 recommend a preferred remedial action alternative
17 for VOC groundwater remediation. The preferred
18 remedial action alternative recommended by
19 Settling Defendants shall restore groundwater to
20 the levels set forth in paragraph 2.14 hereof, or
21 if a waiver is granted pursuant to paragraph 2.16
22 hereof, then to the levels, if any, required by
23 such waiver. Technical Memorandum No. 3 shall
24 draw on the information contained in Technical
25 Memorandum No. 2 (as approved by EPA) and follow
26

1 the NCP and EPA Guidance on Remedial Actions for
2 Contaminated Groundwater at Superfund Sites
3 (December 1988) (copy has been provided to the
4 Settling Defendants) or any superceding final
5 version of such guidance. The draft Technical
6 Memorandum No. 3 shall be submitted to EPA for
7 review and comment. Settling Defendants shall
8 incorporate any changes requested by EPA and
9 submit a proposed final Technical Memorandum No.
10 3 to EPA for review and approval. EPA shall
11 notify Settling Defendants of its approval,
12 disapproval, or approval with conditions. EPA 's
13 review and approval of the recommended remedial
14 action shall be in accordance with, but not
15 limited to, the NCP and EPA's Guidance on
16 Remedial Actions for Contaminated Groundwater at
17 Superfund Sites (December 1988), or any
18 superceding final version of such guidance.

- 19 (f) Settling Defendants shall implement the
20 recommended remedial action alternative for VOC
21 groundwater remediation, as approved by EPA, in
22 accordance with the Schedule set forth in Section
23 4.0 of this Scope of Work.
24
25
26

1 RD Task 4: Remedial Design for the Demolition Work.

2 (a) Demolition Plans and Specifications.

3 (i) Preliminary Demolition Plans and
4 Specifications. Preliminary Plans and
5 Specifications for the Demolition Work shall
6 be submitted to EPA for review and comment
7 at 30% completion of design effort.

8 (ii) Draft and Final Demolition Plans and
9 Specifications. In accordance with the
10 Schedule set forth in Section 4.0 of this
11 Scope of Work, Settling Defendants shall
12 submit draft Demolition Plans and
13 Specifications to EPA for review and
14 comment. Settling Defendants shall
15 incorporate any changes requested by EPA and
16 submit the proposed final Demolition Plans
17 and Specifications to EPA for review and
18 approval. The final Demolition Plans and
19 Specifications shall be of sufficient
20 quality for inclusion in any Remedial Action
21 construction contract bid package to be
22 prepared as described in RD Task 4(e) . EPA
23 shall notify Settling Defendants of its
24 approval, disapproval, or approval with
25 conditions. Settling Defendants shall
26

1 implement the final Demolition Plans and
2 Specifications, as approved by EPA, in
3 accordance with the Schedule set forth in
4 Section 4.0 of this Scope of Work.

5 (b) Applications for Permits, Approvals or
6 Variances.

7 All required applications for permits,
8 approvals or variances for off-Site work in
9 connection with the Demolition Work shall be
10 prepared for submission to the appropriate
11 agencies and all such necessary permits,
12 approvals or variances shall be obtained.

13 (c) Demolition Monitoring Plan.

14 A Monitoring Plan shall be prepared for the
15 Demolition Work. The Demolition Monitoring
16 Plan shall describe the necessary tasks for
17 monitoring and evaluating the effectiveness
18 of the Demolition Work, and whether the
19 clean-up levels for the Demolition Work set
20 out in Section 2.0 of this Scope of Work and
21 the air monitoring requirements set forth in
22 RD Task 4(c)(ii) have been achieved. More
23 specifically, the Demolition Monitoring Plan
24 shall include the elements described in this
25 RD Task 4(c), items (i)
26

1 and (ii). Any elements of the Demolition
2 Monitoring Plan involving sampling and
3 analysis shall follow EPA Region 9 guidance
4 entitled, Preparation of a Region 9 Sampling
5 Plan (November 18, 1987). The draft
6 Demolition Monitoring Plan shall be
7 submitted to EPA for review and comment.
8 Settling Defendants shall incorporate any
9 changes requested by EPA and submit a
10 proposed final Demolition Monitoring Plan to
11 EPA for review and approval. EPA shall
12 notify Settling Defendants of its approval,
13 disapproval, or approval with conditions.
14 Settling Defendants shall implement the
15 Demolition Monitoring Plan in accordance
16 with the Schedule set forth in Section 4.0
17 of this Scope of Work.

18 (i) Verification Sampling - The Demolition
19 Monitoring Plan shall include measures
20 to verify that the PCB clean-up levels
21 specified in the PCB Spill Cleanup
22 Policy are met for any equipment or
23 materials that will be reused. A field
24 Gas Chromatograph may be used, with a
25 minimum of 20% of the samples being
26

1 split and sent to a laboratory which
2 complies with EPA documentation
3 protocols. These laboratory analyses
4 may be independently validated by EPA.
5

6 (ii) Air Quality Monitoring. The Demolition
7 Monitoring Plan shall include measures
8 to provide real-time monitoring of air
9 quality sufficient to allow for control
10 of air emissions.

11 (d) Demolition Contract Bid Documents. If
12 Settling Defendants seek to obtain bids from
13 qualified construction contractors for
14 performing the Demolition Work, the bid
15 documents shall include instructions and
16 forms for submitting bids, the final RD
17 Plans and Specifications for the Demolition
18 Work and a proposed form of Agreement.

19 RD Task 5: Remedial Design for Excavation Work.

20 (a) Excavation Plans and Specifications.

21 (i) Preliminary Excavation Plans and
22 Specifications. Preliminary Plans and
23 Specifications for the Excavation Work
24 shall be submitted to EPA for review
25 and comment at 30% completion of design
26 effort. Settling Defendants shall

1 incorporate in the draft Excavation
2 Plans and Specifications any changes
3 requested by EPA.
4

5 (ii) Draft and Final Excavation Plans and
6 Specifications. The draft Excavation
7 Plans and Specifications shall be
8 prepared and submitted to EPA for
9 review and comment. Settling
10 Defendants shall incorporate any
11 changes requested by EPA and submit the
12 proposed final Excavation Plans and
13 Specifications to EPA for review and
14 approval. EPA shall notify the
15 Settling Defendants of its approval,
16 disapproval, or approval with
17 conditions. Settling Defendants shall
18 implement the final Excavation Plans
19 and Specifications, as approved by EPA,
20 in accordance with the Schedule set
21 forth in Section 4.0 of this Scope of
22 Work. The final Excavation Plans and
23 Specifications shall be of sufficient
24 quality for inclusion in any Demolition
25 construction contract bid package to
26 be prepared as described in RD
Task 5(d).

1 (b) Applications for Permits, Approvals,
2 Variances, and Access Agreements. All
3 required applications for permits,
4 approvals, or variances for off-Site work in
5 connection with the Excavation Work shall be
6 prepared for submission to the appropriate
7 agencies, and all such necessary permits,
8 approvals or variances shall be obtained.
9 Pursuant to Section XII (Site Access) of the
10 Consent Decree, access agreements with
11 property owners and tenants, for Excavation
12 Work to be performed off of the Property,
13 shall be sought.

14 (c) Monitoring Plans. A Monitoring Plan shall
15 be prepared for the Excavation Work. The
16 Excavation Monitoring Plan shall describe
17 the necessary tasks for monitoring and
18 evaluating any required treatment systems,
19 for monitoring and evaluating the
20 effectiveness of the Excavation Work and
21 whether the requirements for the Excavation
22 Work set out in Section 2.0 of this Scope of
23 Work have been achieved. More specifically,
24 the Excavation Monitoring Plan shall include
25 the elements described in this RD Task 5(c),
26

1 items (i) through (iv). Any elements of the
2 Excavation Monitoring Plan involving
3 sampling and analysis, shall follow EPA
4 Region 9 guidance entitled, Preparation of a
5 Region 9 Sampling Plan (November 18, 1987).
6 The draft Excavation Monitoring Plan shall
7 be submitted to EPA for review and comment.
8 Settling Defendants shall incorporate any
9 changes requested by EPA and submit a
10 proposed final Demolition Monitoring Plan to
11 EPA for review and approval. EPA shall
12 notify Settling Defendants of its approval,
13 disapproval, or approval with conditions.
14 Settling Defendants shall implement the
15 Demolition Monitoring Plan in accordance
16 with the Schedule set forth in Section 4.0
17 of this Scope of Work.

18 (i) Verification Sampling - The Excavation
19 Monitoring Plan shall include measures
20 to verify that the soil and concrete
21 clean-up levels are met. Sampling of
22 the excavation shall occur throughout
23 the excavation process. Based on the
24 results of RD Task 3, samples shall be
25
26

1 analyzed for PCBs, VOCs or both. A
2 field Gas Chromatograph may be used,
3 with a minimum of 20% of the samples
4 being split and sent to a laboratory
5 which complies with EPA documentation
6 protocols. These analyses may be
7 independently validated by EPA.
8

9 (ii) Dewatered Groundwater Discharge

10 Monitoring - The Excavation Monitoring
11 Plan shall include measures to verify
12 that any treatment of dewatered
13 groundwater is meeting the performance
14 levels specified in the Excavation
15 Plans and Specifications. Design
16 criteria for the treatment unit shall
17 include specifications to achieve
18 compliance with requirements of the
19 North Coast Regional Water Quality
20 Control Board's Basin Plan for
21 discharge to waters of the North Coast
22 Region or any applicable pretreatment
23 requirements established by a publicly
24 owned wastewater treatment works that
25 is to receive the treated water.
26

1 (iii) Air Monitoring - The Excavation
2 Monitoring Plan shall contain
3 specifications for air monitoring
4 during all activities involving soil
5 disturbance. Air monitoring shall be
6 conducted, and criteria shall be
7 established, which shall dictate when
8 soil excavation and handling activities
9 can or cannot occur based on
10 meteorological data and the results of
11 the monitoring. High volume samplers
12 shall be placed up and down wind of the
13 areas to be excavated (relative to the
14 primary wind direction) and shall be
15 operated continuously during excavation.

16 (iv) Surface Water Monitoring - The
17 Excavation Monitoring Plan shall
18 include measures to verify that surface
19 water is not affected by the Excavation
20 Work. During the Excavation Work,
21 surface water shall be sampled for PCBs
22 during any rain event that produces
23 runoff that could cause surface soil
24 transport. After the final cover is in
25 place, surface water shall be sampled
26

1 for PCBs as described above in this
2 subparagraph iv until three (3) years
3 of data have shown that PCBs are
4 consistently below 0.5 ppb in the
5 samples collected. If, after five (5)
6 years of sampling, the data show that
7 PCBs are not consistently below 0.5 ppb
8 in the samples collected, Settling
9 Defendants shall prepare a draft
10 Supplemental Studies Plan to
11 investigate the sources of PCBs in
12 surface water runoff. The draft
13 Supplemental Studies Plan shall be
14 submitted to EPA for review and
15 comment. Settling Defendants shall
16 incorporate any changes requested by
17 EPA and submit a proposed final
18 Supplemental Studies Plan to EPA for
19 review and approval. EPA shall notify
20 Settling Defendants of its approval,
21 disapproval, or approval with
22 conditions. Settling Defendants shall
23 implement the final Supplemental
24 Studies Plan, as approved by EPA.
25 Based on the results of the
26

1 supplemental studies, Settling
2 Defendants shall prepare a draft
3 Supplemental Work Plan to remedy the
4 source of PCBs in surface water
5 runoff. The draft Supplemental Work
6 Plan shall be submitted to EPA for
7 review and comment. Settling
8 Defendants shall incorporate any
9 changes requested by EPA and submit a
10 proposed final Supplemental Work Plan
11 to EPA for review and approval. EPA
12 shall notify Settling Defendants of its
13 approval, disapproval, or approval with
14 conditions. Settling Defendants shall
15 implement the final Supplemental Work
16 Plan, as approved by EPA.

- 17 (d) Construction Contract Bid Documents. If
18 Settling Defendants seek to obtain bids from
19 qualified construction contractors for
20 performing the Excavation Work, then the bid
21 documents shall include instructions and
22 forms for submitting bids, the final
23 Excavation Plans and specifications and a
24 proposed form of Agreement.
25
26

1 R.D. Task 6: Remedial Design for VOCs in
2 Groundwater.

3 (a) Groundwater Plans and Specifications

4 (i) Preliminary VOC Groundwater Plans and
5 Specifications. Preliminary VOC
6 Groundwater Plans and Specifications
7 shall be submitted to EPA for review
8 and comment at 30% completion of design
9 effort.

10 (ii) Draft and Proposed Final VOC
11 Groundwater Plans and Specifications.
12 Draft VOC Groundwater Plans and
13 Specifications shall be submitted to
14 EPA for review and comment. Settling
15 Defendants shall incorporate any
16 changes requested by EPA and submit
17 proposed final VOC Groundwater Plans
18 and Specifications to EPA for review
19 and approval. If the VOC Groundwater
20 Work is to be put out to bid, the
21 proposed final VOC Groundwater Plans
22 and Specifications shall be of
23 sufficient quality for inclusion in the
24 VOC Groundwater construction contract
25 bid package to be prepared as described
26

1 in RD Task 6(e). EPA shall notify
2 Settling Defendants of its approval,
3 disapproval, or approval with
4 conditions. Settling Defendants shall
5 implement the final VOC Groundwater
6 Plans and Specifications, as approved
7 by EPA, in accordance with the Schedule
8 set forth in Section 4.0 of this Scope
9 of Work.

10 (b) Applications for Permits, Approvals,
11 Variances, and Access Agreements. All
12 required applications for permits, approvals
13 or variances for off-Site work in connection
14 with the VOC Groundwater Work shall be
15 prepared for submission to the appropriate
16 agencies and all such necessary permits,
17 approvals or variances shall be obtained.
18 Pursuant to Section XII (Site Access) of the
19 Consent Decree, access agreements with
20 property owners and tenants for VOC
21 Groundwater Work to be performed off of the
22 Property shall be sought.

23 (c) Monitoring Plan. A VOC Groundwater
24 Monitoring Plan shall be prepared for the
25 VOC Groundwater Work. The VOC Groundwater
26

1 Monitoring Plan shall describe the necessary
2 tasks for monitoring and evaluating any
3 required treatment systems, for monitoring
4 and evaluating the effectiveness of the VOC
5 Groundwater Work, and for determining
6 whether the requirements for the VOC
7 Groundwater Work set out in final Technical
8 Memorandum No. 3 and the clean-up levels
9 required by paragraph 2.15 have been
10 achieved. More specifically, the VOC
11 Groundwater Monitoring Plan shall include
12 the elements described in this RD Task 6,
13 item (d). Any elements of the VOC
14 Groundwater Monitoring Plan involving
15 sampling and analysis shall follow EPA
16 Region 9 guidance entitled, Preparation of a
17 Region 9 Sampling Plan (November 18, 1987).
18 A draft VOC Groundwater Monitoring Plan
19 shall be developed and submitted to EPA for
20 review and comment along with the
21 corresponding draft VOC Groundwater Plans
22 and Specifications. Settling Defendants
23 shall incorporate any changes requested by
24 EPA and submit a proposed final VOC
25 Groundwater Monitoring Plan to EPA for
26

1 review and approval. EPA shall notify
2 Settling Defendants of its approval,
3 disapproval, or approval with conditions.
4 Settling Defendants shall implement the
5 final VOC Groundwater Monitoring Plan, as
6 approved by EPA, in accordance with the
7 Schedule set forth in Section 4.0 of this
8 Scope of Work.

9
10 (d) Verification Sampling - The VOC Groundwater
11 Monitoring Plan shall include measures to
12 verify that the groundwater clean-up levels
13 required by paragraph 2.15 hereof are met.
14 Performance evaluations shall be established
15 on a regular basis to compare actual
16 performance to predicted performance and to
17 determine whether the groundwater clean-up
18 levels will be met in the desired
19 timeframe. Based on these performance
20 evaluations, modifications to the selected
21 groundwater alternative may be required. At
22 the request of EPA, such modifications shall
23 be performed.

24 (e) Construction Contract Bid Documents. If
25 Settling Defendants seek to obtain bids from
26 qualified construction contractors for the

1 VOC Groundwater Work, then the bid documents
2 shall include instructions and forms for
3 submitting bids, the final VOC Groundwater
4 Plans and Specifications and a proposed form
5 of Agreement.

6 4.0 REMEDIAL DESIGN DELIVERABLES AND SCHEDULE

7 Remedial Design deliverables shall be submitted in
8 accordance with the schedule set forth in this Section 4.0.
9 Remedial Design Tasks for which no date is set forth in this
10 Section 4.0 shall be performed in accordance with the schedule
11 set forth in the final work plan applicable to the Task, as
12 approved by EPA. If Settling Defendants' performance of any
13 Remedial Design Task is delayed by any of the following, EPA
14 shall extend the applicable schedule(s) to allow such
15 additional time as may be necessary to complete the delayed
16 Task and to complete any succeeding Tasks affected by the delay
17 (including and allowing for time necessary to remobilize
18 resources and resume work): (1) field conditions not
19 foreseeable at the time the schedule(s) was adopted which EPA
20 determines interfere with the performance of the work to such
21 an extent, even with Settling Defendants taking all practicable
22 steps to avoid delay, that additional time is needed to
23 complete the Task(s); (2) additional work which EPA requires
24 Settling Defendants to perform in connection with a Remedial
25 Design Task, which work was not included as part of the Task
26

1 when the applicable schedule(s) was adopted; (3) delays caused
2 by the EPA in connection with a Remedial Design Task where
3 Settling Defendants have adequately and timely performed all
4 obligations necessary for EPA to take action, and where delay
5 by EPA prevents Settling Defendants' adequate or timely
6 performance of the Task. The schedule set forth below, and the
7 schedules contained in all work plans to be submitted by
8 Settling Defendants, shall be based on calendar days; if a due
9 date falls on a weekend or federal holiday, the deliverable or
10 completion shall be due on the next federal working day.

11 RD Task 1 Deliverables (Remedial Design Work Plan).

12 (a) Remedial Design Work Plan: The draft Remedial Design
13 Work Plan shall be submitted within 25 days after the
14 effective date of the Consent Decree. The proposed final
15 Remedial Design Work Plan shall be submitted within 25 days
16 after receipt of EPA comments on the draft Remedial Design
17 Work Plan.

18 RD Task 2 Deliverables (QAPPs and HSPs).

19 (a) RD-QAPP: The draft RD-QAPP shall be submitted within
20 49 days after the effective date of the Consent
21 Decree. The proposed final RD-QAPP shall be submitted
22 within 34 days after receipt of EPA comments on the
23 draft RD-QAPP.
24
25
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- 1 (b) RD-HSP: The draft RD-HSP shall be submitted within 49
2 days after the effective date of the Consent Decree.
3 The final RD-HSP shall be submitted within 34 days
4 after receipt of EPA comments on the draft RD-HSP.
5 (c) RA-QAPP: The draft RA-QAPP shall be submitted no
6 later than the date on which the draft Demolition
7 Plans and Specifications are submitted. The proposed
8 final RA-QAPP shall be submitted within 34 days after
9 receipt of EPA comments on the draft RA-QAPP.
10 (d) RA-HSP: The draft RA-HSP shall be submitted no later
11 than the date on which the draft Demolition Plans and
12 Specifications are submitted. The final RA-HSP shall
13 be submitted within 34 days after receipt of EPA
14 comments on the draft RA-HSP.

15 RD Task 3 Deliverables (Additional Studies Work).

- 16 (a) Additional Studies Sampling Plan for Soils and
17 Concrete: The draft Additional Studies Sampling Plan
18 for Soils and Concrete shall be submitted within 49
19 days after the effective date of the Consent Decree.
20 The proposed final Additional Studies Sampling Plan
21 for Soils and Concrete shall be submitted within 34
22 days after receipt of EPA comments on the draft
23 Additional Studies Sampling Plan for Soils and
24 Concrete.
25
26

- 1 (b) Technical Memorandum No. 1: The draft Technical
2 Memorandum No. 1 shall be submitted in accordance with
3 the schedule in the final Additional Studies Sampling
4 Plan for Soils and Concrete as it may be amended from
5 time to time with EPA approval during the course of
6 the additional studies field work and laboratory
7 analyses. The proposed final Technical Memorandum No.
8 1 shall be submitted within 25 days after receipt of
9 EPA comments on the draft Technical Memorandum No. 1.
10 (c) Additional Studies Sampling Plan for Groundwater: The
11 draft Additional Studies Sampling Plan for Groundwater
12 shall be submitted within 45 days after the effective
13 date of the Consent Decree. The proposed final
14 Additional Studies Sampling Plan for Groundwater shall
15 be submitted within 21 days after receipt of EPA
16 comments on the draft Additional Studies Sampling Plan
17 for Groundwater.
18 (d) Technical Memorandum No. 2: The draft Technical
19 Memorandum No. 2 shall be submitted in accordance with
20 the schedule in the final Additional Studies Sampling
21 Plan for Groundwater as it may be amended from time to
22 time with EPA approval during the course of additional
23 studies field work and laboratory analyses. The
24 proposed final Technical Memorandum No. 2 shall be
25
26

1 submitted within 34 days after receipt of EPA comments
2 on the draft Technical Memorandum No. 2.

- 3 (e) Technical Memorandum No. 3: The draft Technical
4 Memorandum No. 3 shall be submitted within 99 days
5 after receipt of EPA approval of the final Technical
6 Memorandum No. 2. The proposed final Technical
7 Memorandum No. 3 shall be submitted within 34 days
8 after receipt of EPA comments on the draft Technical
9 Memorandum No. 3.

10 RD Task 4 Deliverables (Remedial Design for the Demolition
11 Work)

12 (a) Demolition Plans and Specifications

- 13 (i) Preliminary: Preliminary Demolition Plans and
14 Specifications shall be submitted within 64 days
15 after EPA approval of the final Remedial Design
16 Work Plan.

- 17 (ii) Draft and Proposed Final: The draft Demolition
18 Plans and Specifications shall be submitted
19 within 69 days after receipt of EPA comments on
20 the Preliminary Demolition Plans and
21 Specifications. The proposed final Demolition
22 Plans and Specifications shall be submitted
23 within 34 days after receipt of EPA comments on
24 the draft Demolition Plans and Specifications.
25
26

1 (b) Demolition Monitoring Plan: The draft Demolition
2 Monitoring Plan shall be submitted at the same time as
3 the draft Demolition Plans and Specifications. The
4 proposed final Demolition Monitoring Plan shall be
5 submitted within 34 days after receipt of EPA comments
6 on the draft Demolition Monitoring Plan.

7 RD Task 5 Deliverables (Remedial Design for the Excavation
8 Work)

9 (a) Excavation Plans and Specifications

10 (i) Preliminary: Preliminary Excavation Plans and
11 Specifications shall be submitted within 45 days
12 after EPA approval of the final Technical
13 Memorandum No. 1.

14 (ii) Draft and Proposed Final: The draft Excavation
15 Plans and Specifications shall be submitted
16 within 69 days after receipt of EPA comments on
17 the Preliminary Excavation Plans and
18 Specifications. The proposed final Excavation
19 Plans and Specifications shall be submitted
20 within 34 days after receipt of EPA comments on
21 the draft Excavation Plans and Specifications.

22 (b) Excavation Monitoring Plan: The draft Excavation
23 Monitoring Plan shall be submitted at the same time as
24 the draft Excavation Plans and Specifications. The
25 proposed final Excavation Monitoring Plan shall be
26

1 submitted within 34 days after receipt of EPA comments
2 on the draft Excavation Monitoring Plan.

3 RD Task 6 Deliverables (Remedial Design for VOCs in
4 Groundwater)

5 (a) Groundwater Plans and Specifications

6 (i) Preliminary: Preliminary VOC Groundwater Plans
7 and Specifications shall be submitted within 45
8 days after EPA approval of final Technical
9 Memorandum No. 3.

10 (ii) Draft and Proposed Final: The draft VOC
11 Groundwater Plans and Specifications shall be
12 submitted within 60 days after receipt of EPA
13 comments on the Preliminary VOC Groundwater Plans
14 and Specifications. The proposed final VOC
15 Groundwater Plans and Specifications shall be
16 submitted within 34 days after receipt of EPA
17 comments on the draft VOC Groundwater Plans and
18 Specifications.

19 (b) VOC Groundwater Monitoring Plan: The draft VOC
20 Groundwater Monitoring Plan shall be submitted at the
21 same time as the draft VOC Groundwater Plans and
22 Specifications. The proposed final VOC Groundwater
23 Monitoring Plan shall be submitted within 34 days
24 after receipt of EPA comments on the draft VOC
25 Groundwater Monitoring Plan.
26

1 5.0 THE REMEDIAL ACTION (RA) TASKS

2 5.1 The objective of the Remedial Action Work is to
3 remediate the Site in accordance with the final Plans and
4 Specifications for the Demolition, Excavation and VOC
5 Groundwater Work. The Remedial Action shall be completed
6 as described in this Scope of Work and the Superfund
7 Remedial Design and Remedial Action Guidance Document
8 (OSWER Directive 9355.04A, June 1986) (copy provided to the
9 Settling Defendants).

10 5.2 Settling Defendants shall provide in their
11 Agreements with construction contractors for adequate
12 supervision of the contractors, throughout the
13 construction, by the engineering consulting firm which
14 prepares the RD Plans and Specifications or such other firm
15 as may be selected by Settling Defendants with the approval
16 of EPA.

17 5.3 The Remedial Action shall consist of the
18 following specific tasks. RA Tasks 1 through 5 shall be
19 performed for each of the three Remedial Action elements
20 (Demolition Work, Excavation Work, and VOC Groundwater
21 Work). However, Task 6 for the Excavation Work and Task 6
22 for the Demolition Work shall be combined in one Remedy
23 Certification Report to be submitted after completion of
24 the Excavation Work.
25
26

1 RA Task 1: Preparation of the Remedial Action Work
2 Plans (RA Work Plans).

3 An RA Work Plan shall be prepared for performing the
4 following RA Tasks 2 through 6 for the Demolition
5 Work, Excavation Work and VOC Groundwater Work. Each
6 RA Work Plan shall contain the schedule and specific
7 approach to be used in implementing each such Task.
8 The schedule in the RA Work Plan shall provide for a
9 specified number of Intermediate Inspections by EPA to
10 occur during the Remedial Action in accordance with RA
11 Task 5. The schedule shall allow a ten (10) day
12 period per inspection for EPA to complete its QA/QC
13 review of laboratory results. Such Intermediate
14 Inspections provided for in the schedule and
15 accomplished in the allowed ten (10) day period of
16 time shall not constitute a delay by EPA for the
17 purposes of section 6.0 of this Scope of Work.
18 Periods longer than ten (10) days shall not constitute
19 a delay, if such longer periods do not affect Settling
20 Defendants' ability to timely meet the requirements of
21 this Scope of Work and the Consent Decree. Each draft
22 RA Work Plan shall be submitted to EPA for review and
23 comment. Settling Defendants shall incorporate any
24 changes requested by EPA and submit a proposed final
25 RA Work Plan to EPA for review and approval. EPA
26

1 shall notify Settling Defendants of its approval,
2 disapproval, or approval with conditions. Settling
3 Defendants shall implement each final RA Work Plan, as
4 approved by EPA, in accordance with the schedule set
5 forth in Section 6.0 of this Scope of Work. Nothing
6 in this subparagraph shall prevent Settling Defendants
7 from proceeding with the Remedial Action Work, at
8 their own risk, before EPA completes its QA/QC review.

9 RA Task 2: Construction Contracting.

10 Construction contracts shall be entered for the
11 purpose of performing the three elements of the
12 Remedial Action.

13 RA Task 3: Construction of Remedial Action.

- 14 (a) The Remedial Action shall be initiated and
15 completed in accordance with the final RD Plans
16 and Specifications and the final Monitoring Plan
17 for each respective Remedial Action element.
18 (b) Settling Defendants' Project Coordinator shall
19 maintain a daily log of Remedial Work performed
20 at the Site. The Settling Defendants' Project
21 Coordinator shall note in the daily log any
22 discrepancies between the Remedial Work performed
23 and the RD Plans and Specifications, the
24 Monitoring Plans or the QAPP; the date on which
25
26

1 each such discrepancy is discovered; the
2 resolution of each such discrepancy; and the date
3 on which each such discrepancy is resolved. The
4 Settling Defendants' Project Coordinator shall
5 report to the EPA Project Coordinator such
6 discrepancies and have the EPA Project
7 Coordinator initial the entries in the daily log
8 which discuss the discrepancies. This initialing
9 by EPA's Project Coordinator shall not constitute
10 EPA approval of any discrepancy.

11 RA Task 4: Monthly Progress Reports.

12 Monthly progress reports shall be prepared and
13 submitted to EPA. The reports shall be of sufficient
14 detail to allow EPA to develop a chronological record
15 of all Remedial Action Work activities. Monthly
16 progress reports shall be submitted on the 15th day of
17 the calendar month following the calendar month for
18 which the report is given. In the monthly progress
19 reports, Settling Defendants shall summarize entries
20 regarding discrepancies made in the daily log pursuant
21 to RA Task 3(b) hereof. Settling Defendants shall
22 request EPA to approve the resolution of each such
23 discrepancy. EPA shall provide a written response to
24 Settling Defendants indicating its approval or
25 disapproval of the resolution of each such
26

1 discrepancy. The first progress report shall be
2 submitted on the 15th day after the first full
3 calendar month after EPA approves or approves with
4 conditions the final Plans and Specifications for the
5 Demolition Work. The final monthly progress report
6 shall be submitted on the 15th day of the calendar
7 month following the calendar month in which all
8 Remedial Action Work involving construction at the
9 Site has been completed except for surface water and
10 groundwater monitoring to confirm that the
11 requirements for the Excavation Work and the VOC
12 Groundwater Work have been met.

13 RA Task 5: Intermediate, Prefinal, and Final
14 Inspections.

- 15 (a) Intermediate Inspections. Intermediate
16 inspections shall be conducted periodically
17 throughout construction of the three Remedial
18 Action elements as provided in the relevant RA
19 Work Plan. These inspections will be conducted
20 as needed to obtain EPA agreement that the
21 segment of the construction activity which is
22 being inspected is complete. (For example, after
23 excavation of soil in a designated area, an
24 inspection of that area may be conducted to
25 obtain EPA's agreement that the area can be
26

1 backfilled with clean soil.) The inspection
2 shall be led by the EPA Project Coordinator,
3 shall include the Settling Defendants' Project
4 Coordinator, and may include other participants
5 from EPA and the State of California. The
6 Settling Defendants' Project Coordinator shall
7 prepare Field Memoranda which document each such
8 inspection. The EPA Project Coordinator shall
9 initial each Field Memorandum to document
10 approval of the Field Memorandum. Nothing in
11 this subparagraph shall prevent Settling
12 Defendants from proceeding with the Remedial
13 Action Work, at their own risk, without first
14 obtaining EPA agreement that the preceeding
15 segment of the Remedial Action Work has been
16 completed.

17 (b) Prefinal Inspections. A Prefinal Inspection
18 shall be conducted upon preliminary completion of
19 the construction portion of each Remedial Action
20 element and before demobilization of the relevant
21 contractor. The Prefinal Inspection shall be
22 conducted to obtain EPA agreement that the
23 construction portion of the Remedial Action
24 element being inspected has been completed in
25 accordance with the relevant Plans and
26

1 Specifications and the Scope of Work and meets
2 the relevant requirements of Appendix C, except
3 post-construction monitoring. The Prefinal
4 Inspection shall be led by the EPA Project
5 Coordinator, shall include the Settling
6 Defendants' Project Coordinator, and may include
7 other participants from EPA and the State of
8 California.

9
10 (c) Prefinal Inspection Reports. Upon completion of
11 each Prefinal Inspection, Settling Defendants'
12 Project Coordinator shall prepare a draft
13 Prefinal Inspection Report which presents the
14 results of the Prefinal Inspection; the
15 outstanding items, if any, identified by EPA; the
16 proposed actions required to resolve any items
17 identified; and a schedule for the completion of
18 such items. If during the Prefinal Inspection,
19 EPA identifies no further outstanding
20 construction items necessary to complete the
21 relevant element(s) of the Remedial Action,
22 Settling Defendants' draft Prefinal Inspection
23 Report shall document completion of the
24 construction activities for the relevant element
25 of the Remedial Action. Settling Defendants
26 shall submit the draft Prefinal Inspection Report

1 to EPA for review and comment. Settling
2 Defendants shall incorporate any changes
3 requested by EPA and submit a proposed final
4 Prefinal Inspection Report to EPA for review and
5 approval. EPA shall notify Settling Defendants
6 of its approval, disapproval, or approval with
7 conditions. If EPA approves a final Prefinal
8 Inspection Report which documents that no further
9 construction items are necessary for completion
10 of the relevant element(s) of the Remedial
11 Action, then no further Prefinal Inspections for
12 that portion of the Remedial Action will be
13 performed, Settling Defendants may demobilize
14 their construction contractors, and
15 post-construction monitoring activities may
16 proceed. If the Prefinal Inspection Report, as
17 approved by EPA, identifies further outstanding
18 construction items, Settling Defendants shall
19 perform the actions required to complete such
20 outstanding items in accordance with the schedule
21 set forth in the Prefinal Inspection Report, as
22 approved by EPA. Upon completion of such work,
23 Settling Defendants shall repeat subsections (b)
24 and (c) of this RA Task 5.
25
26

1
2 (d) Final Monitoring Reports. At the completion of
3 post-construction monitoring for the Excavation
4 Work, Settling Defendants shall submit to EPA a
5 draft Final Monitoring Report which presents the
6 monitoring data necessary to verify that PCBs
7 have been consistently below 0.5 ppb in the
8 surface water runoff samples collected over a
9 three year period. At the completion of the
10 post-construction monitoring for the VOC
11 Groundwater Work, Settling Defendants shall
12 submit to EPA a draft Final Monitoring Report
13 which presents the monitoring data necessary to
14 verify the achievement of the cleanup levels
15 required by paragraph 2.15 hereof. Both draft
16 Final Monitoring Reports shall be submitted to
17 EPA for review and comment. Settling Defendants
18 shall incorporate any changes requested by EPA
19 and submit proposed final Final Monitoring
20 Reports to EPA for review and approval. EPA
21 shall notify Settling Defendants of its approval,
22 disapproval, or approval with conditions.

23 (e) Final Inspection. After approving each Final
24 Monitoring Report, EPA shall schedule and conduct
25 a Final Inspection of the relevant element of the
26 Remedial Action. The Final Inspection shall be

1 conducted to obtain EPA agreement that the
2 construction portion of the Remedial Action
3 element being inspected, and the surface water or
4 groundwater monitoring requirements of the
5 relevant Monitoring Plans, have been fully
6 completed. A detailed list of the activities
7 necessary for completion of the relevant element
8 of the Remedial Action is contained in Appendix C
9 to the Consent Decree. The Final Inspection
10 shall be led by the EPA Project Coordinator,
11 shall include the Settling Defendants' Project
12 Coordinator and may include participants from EPA
13 and the State.

14 RA Task 6: Remedy Certification Report.

- 15 (a) Two Remedy Certification Reports shall be
16 prepared by the Settling Defendants. The first
17 shall be prepared upon completion of the Final
18 Inspection for the Excavation Work and shall
19 address both the Demolition and the Excavation
20 portions of the Remedial Action. The second
21 shall be prepared upon completion of the Final
22 Inspection for the VOC Groundwater Work and shall
23 address only the VOC Groundwater Work. Each
24 Remedy Certification Report shall include the
25 following information:
26

- 1 (i) A synopsis of the relevant tasks required by
2 this Scope of Work.
3
4 (ii) A list of any modifications to the Remedial
5 Action Tasks described in the Scope of Work,
6 an explanation of why these were necessary,
7 and a certification that these modifications
8 were approved by EPA.
9
10 (iii) For the Demolition and Excavation Work,
11 certification that (1) construction
12 activities are complete; (2) all hazardous
13 substances required to be disposed of
14 off-Site are so disposed; and (3) it has
15 been demonstrated, through the monitoring
16 required by the Demolition and Excavation
17 Monitoring Plans, that the operation of the
18 remedy is successfully attaining the
19 requirements of the Scope of Work and
20 Appendix C for the Demolition and Excavation
21 Work. For the VOC Groundwater Work,
22 certification that (1) required construction
23 activities, if any, are complete; (2) it has
24 been demonstrated, through the monitoring
25 required by the VOC Groundwater Monitoring
26 Plan, that the remedy is successfully
attaining the cleanup levels required by

1 paragraph 2.15 hereof, and that the
2 requirements of Appendix C for the VOC
3 Groundwater Work have been met.

4 (v) For the Demolition and Excavation Work,
5 documentation relating to the Demolition and
6 Excavation Work which is necessary to
7 support deletion of the Site from the NPL.
8 For the VOC Groundwater Work, documentation
9 relating to the VOC Groundwater Work which
10 is necessary to support deletion of the Site
11 from the NPL.

12 (b) Each Remedy Certification Report shall be
13 submitted to EPA. EPA shall review the Remedy
14 Certification Report and respond pursuant to
15 Section XXIX (Completion of the Remedial Action)
16 of the Consent Decree.

17 6.0 REMEDIAL ACTION DELIVERABLES AND SCHEDULE

18 Remedial Action deliverables shall be submitted and
19 Remedial Action Tasks shall be performed in accordance with the
20 schedule set forth in this Section 6.0. Remedial Action Tasks
21 for which no date is set forth in this Section 6.0 shall be
22 performed in accordance with the schedule set forth in the
23 final work plan applicable to the Task, as approved by EPA. If
24 Settling Defendants' performance of any Remedial Action Task is
25 delayed by any of the following, EPA shall extend the
26

1 applicable schedule(s) to allow such additional time as may be
2 necessary to complete the delayed Task and to complete any
3 succeeding Tasks affected by the delay (including and allowing
4 for time necessary to remobilize resources and resume work):
5 (1) field conditions not foreseeable at the time the
6 schedule(s) was adopted which EPA determines interfere with the
7 performance of the work to such an extent, even with Settling
8 Defendants taking all practicable steps to avoid delay, that
9 additional time is needed to complete the Task(s); (2)
10 additional work which EPA requires Settling Defendants to
11 perform in connection with a Remedial Action Task, which work
12 was not included as part of the Task when the applicable
13 schedule(s) was adopted; (3) delays caused by the EPA in
14 connection with a Remedial Action Task where Settling
15 Defendants have adequately and timely performed all obligations
16 necessary for EPA to take action, and where delay by EPA
17 prevents Settling Defendants' adequate or timely performance of
18 the Task (periods of ten (10) days or less for EPA to obtain
19 the results of split samples shall not constitute a delay for
20 purposes of this Section, provided that each such period is
21 included in the RA Work Plan schedule prepared in accordance
22 with RA Task 1 and approved by EPA); (4) wind conditions at the
23 Site which delay demolition or excavation activities pursuant
24 to the air monitoring requirements of the Demolition and
25 Excavation Monitoring Plans approved by EPA pursuant to this
26

1 Scope of Work; or (5) failure to obtain a required permit,
2 approval or variance, when Settling Defendants have timely
3 submitted an application for the permit, approval or variance,
4 and failure to obtain the permit, approval or variance could
5 not have been prevented or overcome by diligent efforts on the
6 part of the Settling Defendants or their Contractor(s). The
7 schedule set forth below, and the schedules contained in all
8 work plans to be submitted by Settling Defendants, shall be
9 based on calendar days; if a due date falls on a weekend or
10 federal holiday, the deliverable or completion shall be due on
11 the next federal working day.

12 RA Task 1 Deliverables (Remedial Action Work Plans).

13 (a) Remedial Action Work Plans: The draft Remedial Action
14 Work Plan for each Remedial Action element shall be
15 submitted within 25 days after whichever of the
16 following documents EPA approves last for each
17 Remedial Action element: the final Plans and
18 Specifications, the final Monitoring Plan, the final
19 HSP, or the final QAPP. The proposed final Remedial
20 Action Work Plan for each element shall be submitted
21 within 25 days after receipt of EPA comments on the
22 relevant draft Remedial Action Work Plan.
23
24
25
26

1 RA Tasks 2 and 3 Deliverables (Construction Contracts and
2 Construction of Remedial Action).

3 (a) Construction Contracts and Construction Schedule:

4 Settling Defendants shall enter construction contracts
5 and construct the Remedial Action as follows:

- 6 (i) If EPA approves the final Excavation Plans and
7 Specifications, Monitoring Plan, HSP, and QAPP
8 after March 15 of any calendar year but before
9 January 15 of the next calendar year, Settling
10 Defendants shall enter construction contracts for
11 the Excavation Work by April 1 of the next
12 calendar year and shall begin the Excavation Work
13 by May 1 of the next calendar year. If EPA
14 approves the final Excavation Plans and
15 Specifications, Monitoring Plan, HSP, and QAPP
16 after January 15 but before March 15 of any
17 calendar year, Settling Defendants shall enter
18 construction contracts for the Excavation Work by
19 June 1 of the same calendar year and shall begin
20 the Excavation Work by July 1 of the same
21 calendar year. The RA Work Plan shall schedule
22 the construction portion of the Excavation Work
23 such that tasks up to and including excavation
24 and backfill shall be completed in the same
25 calendar year in which it is begun.
26

1 (ii) Settling Defendants shall enter construction
2 contracts for the Demolition and Groundwater Work
3 no later than seventy-five days (75) days after
4 receipt of EPA approval of the relevant Plans and
5 Specifications, Monitoring Plans, HSPs and
6 QAPPs. The Settling Defendants shall begin the
7 Demolition and VOC Groundwater Work no later than
8 30 days after entering into such contracts.

9 RA Task 4 Deliverables (Monthly Progress Reports).

10 (a) Monthly Progress Reports: The Monthly Progress
11 Reports shall be submitted in accordance with the
12 schedule set forth in RA Task 4.

13 RA Task 5 Deliverables (Prefinal Inspection Reports, Final
14 Monitoring Reports, and Remedy Certification Report).

15 (b) Prefinal Inspection Reports. Each draft Prefinal
16 Inspection Report shall be submitted within 60 days
17 after completion of the Prefinal Inspection for the
18 relevant portion of the Remedial Action. The proposed
19 final Prefinal Inspection Reports shall be submitted
20 within 30 days after receipt of EPA comments on the
21 draft Prefinal Inspection Reports.

22 (c) Final Monitoring Reports. The draft Final Monitoring
23 Report for the Demolition and Excavation Work shall be
24 submitted within 45 days after Settling Defendants
25 notify EPA that Settling Defendants have concluded
26

1 that the post-construction monitoring for the
2 Excavation Work is complete. The draft Final
3 Monitoring Report for the VOC Groundwater Work shall
4 be submitted within 45 days after Settling Defendants
5 notify EPA that Settling Defendants have concluded
6 that the post-construction monitoring, if any, for the
7 VOC Groundwater Work is complete. The proposed final
8 Final Monitoring Reports shall be submitted within 30
9 days after receipt of EPA comments on the draft Final
10 Monitoring Reports.

11 RA Task 6 Deliverables (Remedy Certification Report).

- 12 (a) Remedy Certification Reports: Each draft Remedy
13 Certification Report shall be submitted within 60 days
14 after completion of the Final Inspection for the
15 relevant portion of the Remedial Action.
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1 APPENDIX C

2 Activities Necessary for Completion
3 of Remedial Action

4 The Remedial Action shall be deemed complete when the fol-
5 lowing Remedial Action activities have been completed to the
6 satisfaction of EPA:

7 A. Demolition and Excavation Elements

8 1. Dismantling of the Casting Plant, and decontamina-
9 tion of PCB-contaminated equipment and materials intended for
10 reuse or other recycling to the cleanup levels set forth at 40
11 C.F.R. § 761.125; and

12 2. Excavation and removal of soils and concrete at the
13 Site containing PCBs at concentrations greater than 10 mg/kg and
14 excavation of unsaturated soils containing VOCs and unsaturated
15 soils which may be a significant source of VOCs in groundwater at
16 concentrations greater than 5 mg/kg TCE, 8 mg/kg 1,2 DCE, 0.53
17 mg/kg Benzene, and 0.03 mg/kg Vinyl Chloride; and

18 3. Excavation of sediments in the drainage ditch lead-
19 ing from the Property, and any surface soils (the top six (6)
20 inches of soil prior to excavation) at the Site outside of the
21 area on the Property to be capped or backfilled with clean soil,
22 which contain PCBs at concentrations greater than 1 mg/kg and
23 less than 10 mg/kg and have the potential to migrate into surface
24 water; and

25 4. Disposal of excavated soils, concrete and sediments
26 with PCB concentrations greater than 10 mg/kg or containing
27 levels of VOC concentrations greater than the respective con-
28 centrations specified in paragraph 2 hereof, (unless such VOC

1 containing soils, concrete, or sediments are treated on-site
2 (pursuant to EPA approval) so as to contain VOCs in concentra-
3 tions less than those specified for VOCs in paragraph 2 hereof),
4 in an appropriate off-site facility in compliance with Section
5 121(d)(3) of CERCLA; and

6 5. Consolidation of those soils, sediments and con-
7 crete which have not been disposed of off-site and which contain
8 PCBs at concentrations equal to or less than 10 mg/kg but more
9 than 1 mg/kg in the excavation area on the Property; and

10 6. Disposal of contaminated equipment and material
11 which does not meet the cleanup levels set forth in 40 C.F.R. §
12 761.125, in an appropriate off-site facility in compliance with
13 Section 121 (d)(3) of CERCLA; and

14 7. Verification soil sampling to ensure achievement of
15 PCB and VOC cleanup levels; and

16 8. Placement of ten (10) inches or more of clean soil
17 and revegetation or paving in areas where soils containing more
18 than 1 mg/kg PCBs have been consolidated on the Property; and

19 9. Monitoring of surface water until it can be shown
20 for three years that PCB concentrations are consistently at or
21 below 0.5 ppb.

22 B. VOC Groundwater Element

23 1. Conduct additional sampling to determine the verti-
24 cal and horizontal extent of VOCs in groundwater at the Site; and

25 2. Evaluation of groundwater remedial action alterna-
26 tives, and recommendation of a preferred alternative, in accor-
27 dance with Paragraph 2.14 of the Scope of Work, the NCP and EPA
28

1' Guidance on Remedial Actions for Contaminated Groundwater at Su-
2 perfund Sites, (December, 1988), or any final superseding version
3 of such guidance; and

4 3. Construction of the VOC groundwater remedial action
5 alternative approved by EPA; and

6 4. Monitoring of performance of any VOC groundwater
7 remediation system and verification that the cleanup levels re-
8 quired by Paragraph 2.15 of the Scope of Work have been achieved.